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VERONICA LILIANA COTTO YOC
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 B.D.A.C., a minor, and VERONICA
LILIANA COTTO YOC, on behalf of
12 herself and B.D.A.C.,

13 Petitioners/Plaintiffs,

14 v.

15 SCOTT LLOYD, in his official capacity as
Director of the Office of Refugee
16 Resettlement, and ELICIA SMITH, in her
official capacity as Federal Field Specialist,
17 Office of Refugee Resettlement,

18 Respondents/Defendants.
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Case No. 18-cv-06791-NC

**AMENDED PETITION FOR WRIT OF
HABEAS CORPUS AND COMPLAINT
FOR DECLARATORY AND INJUNCTIVE
RELIEF; EXHIBITS A-D**

INTRODUCTION

1. Petitioner B.D.A.C. is a seventeen-year-old child who fled to the United States from Guatemala after experiencing horrific violence there. In December 2017, he came to the United States, along with his older sisters and their families, seeking asylum and to reunify with his mother who resides in Ohio. Immigration authorities apprehended the family at the border and quickly released B.D.'s sisters and their minor children from immigration detention. But rather than releasing B.D. along with his family, the Office of Refugee Resettlement (ORR) has detained him for the last eleven months—with the last ten months of that detention occurring in locked juvenile detention facilities in Virginia and California.

2. When this case is stripped to its core, it becomes clear that B.D.'s prolonged detention is the result of (1) ORR's unlawful policies and practices regarding family separation and (2) ORR's failure to identify B.D. as a person with a disability. ORR has a statutory responsibility to "promptly" place B.D. "in the least restrictive setting that is in the best interest of the child." 8 U.S.C. § 1232(c)(2)(A). For many immigrant children who come into its custody, ORR fulfills its mandate by placing children with their parents. Indeed, B.D.'s mother, Petitioner Veronica Liliana Cotto Yoc, requested in December 2017 that ORR release B.D. to her care. Since then, more than eleven months have passed—ten with B.D. detained in locked juvenile detention facilities. ORR has noted that B.D. and Ms. Cotto Yoc have a "close, positive relationship," and nobody has ever alleged that Ms. Cotto Yoc is an unfit parent. But ORR has nevertheless failed to adjudicate Ms. Cotto Yoc's reunification request. ORR's failure to "promptly" act violates ORR's statutory mandate and B.D. and Ms. Cotto Yoc's constitutional rights to due process and family integrity.

3. This case is complicated by a single statement B.D. made about a year ago and ORR's subsequent failure to understand the connection between that statement and B.D.'s disability. ORR claims that in December 2017, B.D. admitted to being a gang member. This statement is false; substantial objective evidence disproves the claim. ORR's own records concede that there is no evidence that B.D. has ever been in a gang. B.D. is a survivor of substantial childhood abuse, including a kidnapping at the hands of gang members and a series of

1 sexual assaults he suffered at age nine. These experiences have caused B.D. to suffer from
 2 significant Posttraumatic Stress Disorder (PTSD), and a clinical psychologist opines that B.D.’s
 3 PTSD makes him an unreliable narrator of his own life story. But solely based on B.D.’s
 4 purported admission, ORR “stepped up” B.D. to be detained in its highest security facilities—
 5 locked juvenile detention centers—and kept him in there well after his mental health-related
 6 disabilities and unreliable memory have come to light. ORR acts more slowly and applies
 7 additional scrutiny to family-reunification requests pertaining to youth placed in these higher
 8 security facilities. Thus, by subjecting B.D.’s family-reunification request to this regime, ORR
 9 has discriminated against B.D. on the basis of disability.

10 JURISDICTION

11 4. This Court has authority to grant a writ of habeas corpus pursuant to the
 12 Constitution of the United States, art. I, § 9, cl. 2. This Court has statutory jurisdiction pursuant to
 13 28 U.S.C. §§ 1331, 1651, 2201, 2202, and 2241.

14 VENUE

15 5. Venue is appropriate in this Court pursuant to 28 U.S.C. §§ 1391 and 2242
 16 because Respondent Smith maintains her place of business in San Francisco and a substantial part
 17 of the events or omissions giving rise to the action occurred within the County of San Francisco.

18 INTRADISTRICT ASSIGNMENT

19 6. Pursuant to Local Rule 3-2(c), this action should be assigned to the San Francisco
 20 Division or the Oakland Division because it arises in the County of San Francisco.

21 PARTIES

22 7. Petitioner B.D.A.C. is a seventeen-year-old youth from Guatemala. ORR detains
 23 B.D. in the Yolo County Juvenile Detention Facility, located at 2880 East Gibson Road,
 24 Woodland, California. The government has classified B.D. as an unaccompanied child pursuant
 25 to 6 U.S.C. § 279. ORR has detained B.D. in locked juvenile detention facilities since December
 26 2017. This Petition and Complaint refers to B.D.A.C. by his initials as required by Fed. R. Civ. P.
 27 5.2(a)(3).
 28

1 8. Petitioner¹ VERONICA LILIANA COTTO YOC is B.D.A.C.'s mother. She
2 resides in Cincinnati, Ohio. Ms. Cotto Yoc first requested that ORR release B.D. to her care in
3 December 2017 and has diligently sought to obtain physical custody of her son ever since. She
4 brings this action on both her and her son's behalf.

5 9. Respondent SCOTT LLOYD is the Director of ORR, the component of the U.S.
6 Department of Health and Human Services (HHS) responsible for implementing HHS's
7 obligations to unaccompanied minors who are immigrants. Director Lloyd has a statutory
8 obligation to provide care for, to maintain custody of, and to implement the placement decisions
9 of B.D. in a manner consistent with the U.S. Constitution, federal law, and the federal
10 government's obligations under the settlement in *Flores v. Whitaker*, No. 85-cv-4544-DMG
11 (AGRx) (C.D. Cal.). On information and belief, Respondent Lloyd has caused ORR to adjudicate
12 release requests for children in its highest security facilities differently than it treats release
13 requests for children in lower security facilities. On information and belief, release requests
14 pertaining to children in the higher security facilities are subject to additional layers of
15 administrative review and have a prolonged processing time. On information and belief, ORR is
16 less likely to release children in locked facilities than children in unlocked facilities. Respondent
17 Lloyd is sued in his official capacity.

18 10. Respondent ELICIA SMITH is an ORR Federal Field Specialist. Federal Field
19 Specialist Smith is the government official responsible for the care and custody of children who
20 ORR has placed in the Yolo County Juvenile Detention Facility. In this role, Federal Field
21 Specialist Smith is responsible for determining B.D.'s placement and has authority to approve his
22 release to his mother's care. Federal Field Specialist Smith maintains her office in San Francisco,
23 California. She has a statutory obligation to provide care for, to maintain custody of, and to
24

25 ¹ This is a Petition for a Writ of Habeas Corpus and a Complaint for Declaratory and Injunctive
26 Relief. B.D. raises the habeas claims and so is a Petitioner. Ms. Cotto Yoc brings the habeas
27 action on her son's behalf and so is also a Petitioner. On her own behalf, Ms. Cotto Yoc asserts
28 claims against the ORR officials named as parties and so is also a Plaintiff in this action.
Accordingly, the ORR officials named as parties are formally Respondents/Defendants. For
readability, this Complaint refers to B.D. and Ms. Cotto Yoc as Petitioners and to the ORR
officials as Respondents.

1 implement the placement decisions of B.D. in a manner consistent with the U.S. Constitution,
 2 federal law, and the federal government's obligations under the settlement in *Flores v. Whitaker*,
 3 No. 85-cv-4544-DMG (AGRx) (C.D. Cal.). Federal Field Specialist Smith is sued in her official
 4 capacity.

5 FACTUAL ALLEGATIONS

6 **A. During his first seventeen years of life, B.D. survived a kidnapping, serial** 7 **sexual assaults, and child abuse.**

8 11. B.D. was born in 2001. Ms. Cotto Yoc is his mother. From birth until he was about
 9 seven years old, B.D. lived in Guatemala City with his mother, his father, and his siblings. B.D.'s
 10 father was abusive toward him and his mother. For example, B.D.'s father hit and was
 11 emotionally abusive toward B.D. B.D. also witnessed his father hit and kick his mother. During
 12 this period, B.D. was exposed to abuse that was regular and, at times, virtually daily. Ex. A,
 13 Declaration of Veronica Liliana Cotto Yoc (Cotto Yoc Decl.) at ¶¶ 1-3.

14 12. When B.D. was about seven years old, Ms. Cotto Yoc separated from her abusive
 15 partner, B.D.'s father. Ms. Cotto Yoc remained in Guatemala City to earn money to support her
 16 family, for which she was suddenly the sole breadwinner. B.D. and his siblings moved to live
 17 with their grandmother, Ms. Cotto Yoc's mother, in Malacatan, Guatemala, which is about seven
 18 hours driving distance from the capital city. During this period, Ms. Cotto Yoc financially
 19 supported her children, visited them in Malacatan twice a month, and spoke with them virtually
 20 every day. Ex. A, Cotto Yoc Decl. at ¶¶ 4-5.

21 13. When B.D. was about nine years old, his sister informed his mother that their
 22 grandmother was abusive toward them. B.D.'s sister told Ms. Cotto Yoc that their grandmother
 23 physically punished B.D. and his siblings. The children's grandmother threatened them and
 24 retained for herself money that Ms. Cotto Yoc sent to Malacatan for her children's well-being.
 25 Ex. A, Cotto Yoc Decl. at ¶ 6.

26 14. In response, Ms. Cotto Yoc took quick action. She moved her children out of her
 27 mother's house and back to Guatemala City to live with her. At this time, she rented her residence
 28 from a man named Raul. Raul was friendly toward the family and was sometimes available to

1 supervise the younger children while Ms. Cotto Yoc worked. Both Ms. Cotto Yoc and B.D. came
2 to trust Raul. One day, nine-year-old B.D. informed his mother that he no longer wanted to be
3 around Raul. B.D. declined to tell his mother anything else about Raul. From that point forward,
4 Ms. Cotto Yoc did not allow Raul to be around her children, although she did not know why Raul
5 made B.D. feel uncomfortable. Ex. A, Cotto Yoc Decl. at ¶¶ 7-8.

6 15. Shortly thereafter, Ms. Cotto Yoc moved her family to Malacatan. Around this
7 time, she noticed some concerning changes to B.D.'s behavior. He began to bathe twice a day.
8 While B.D. had previously not had behavioral problems in school, he began getting into
9 arguments with his peers—always boys. B.D. would not discuss the source of his new emotional
10 difficulties with his mother. Over time, Ms. Cotto Yoc decided to seek professional help. When
11 B.D. was eleven, Ms. Cotto Yoc retained a psychologist to evaluate and to provide therapy to
12 B.D. During these sessions, B.D. informed the psychologist that Raul repeatedly raped him when
13 he was nine years old. The psychologist informed Ms. Cotto Yoc that, in her view, B.D.'s
14 behaviors stemmed from the sexual abuse he suffered at the hands of Raul. Ex. A, Cotto Yoc
15 Decl. at ¶ 9.

16 16. B.D. continued to live with his mother until he was about fifteen years old. In the
17 fall of 2016, Ms. Cotto Yoc left Guatemala to come to the United States. While she agonized over
18 the decision of whether to bring B.D. with her, she ultimately believed him to be too vulnerable to
19 make the journey. She entrusted him to the care of her adult daughter, B.D.'s sister, who then
20 resided in Tacana, Guatemala. Ex. A, Cotto Yoc Decl. at ¶¶ 10-11.

21 17. Immigration authorities detained Ms. Cotto Yoc near the border after her journey
22 to the United States. The government conducted a credible fear interview, a type of screening
23 interview designed to determine whether the arriving non-citizen has a credible fear of
24 persecution such that the person might qualify for asylum in the United States. The interviewer
25 determined that Ms. Cotto Yoc had a credible fear of future persecution that may qualify her for
26 asylum protection. The government released Ms. Cotto Yoc from detention. She now resides near
27 Cincinnati, Ohio, and is pursuing her asylum claim in the immigration courts. Ex. A, Cotto Yoc
28 Decl. at ¶ 12.

1 18. From the fall of 2016 until about April 2017, B.D. lived with his sister in Tacana.
2 From the United States, Ms. Cotto Yoc continued to support her son, and she spoke with him
3 virtually daily. During this period, B.D., like many teenagers, lost interest in school. He
4 reconnected with his father and, in or about April 2017, B.D. decided to move and live with his
5 father in Guatemala City. Overcoming the difficulties of communicating directly with her abuser,
6 Ms. Cotto Yoc discussed with B.D.'s father the importance of providing for their son, and she
7 continued speaking with B.D. by phone whenever possible. Ex. A, Cotto Yoc Decl. at ¶¶ 13-14.

8 19. Unfortunately, B.D.'s father remained just as abusive and neglectful toward B.D.
9 as he was during his son's first seven years of life. He failed to provide adequate food for B.D. or
10 to encourage him to continue his education. He also failed to supervise his child adequately. In or
11 around November 2017, Guatemalan gang members kidnapped B.D. and demanded that his
12 family pay a ransom. From the United States, Ms. Cotto Yoc organized the search effort. She
13 reported her son's disappearance to the Guatemalan police, which issued something roughly akin
14 to an AMBER alert for B.D.'s disappearance. She sent money to Guatemala so that her family
15 could create, print, and circulate flyers announcing B.D.'s disappearance, all the while B.D.'s
16 kidnappers continued to make ransom demands of and to issues threats to his family. After about
17 four terrifying, agonizing days, Guatemalan police rescued B.D. He was in a drugged state and
18 wearing strange clothes. B.D. cannot verbalize what occurred to him during the time he was
19 kidnapped. Ex. A, Cotto Yoc Decl. at ¶¶ 15-16.

20 20. After the rescue, Guatemalan police determined that B.D.'s father was not a fit
21 parent. The police returned B.D. to the physical custody of his adult sister in Tacana, with whom
22 he had lived until April 2017. But the danger to B.D. and his family was not over. His kidnappers
23 and other gang members continued to call his adult sister in Tacana to threaten the family with
24 death and other harm and to demand a ransom. In response to these threats, B.D. and his family
25 fled to the United States in the late fall of 2017. Ex. A, Cotto Yoc Decl. at ¶¶ 16-18.

26 21. B.D. lived in Guatemala from his birth in 2001 until the fall of 2017. There is no
27 objective evidence that B.D. was ever a gang member or otherwise involved in gang activity in
28 Guatemala. Attached to this Petition is sworn testimony from Ms. Cotto Yoc declaring that B.D.

has never been gang-involved. Ex. A, Cotto Yoc Decl. at ¶ 22. Notably, when the Guatemalan police rescued B.D. from his kidnappers, they treated B.D. as a crime victim, not a gang member. *Id.* at ¶ 16. Even ORR’s own records acknowledge that there is no objective evidence that B.D. is a gang member.

B. B.D. suffers from PTSD and Adjustment Disorder and as a result is not a reliable narrator of his own life story.

22. Predictably, serial sexual assault, a kidnapping, and prolonged child abuse and neglect had a profound, negative effect on B.D. Dr. Yenys Castillo, a clinical psychologist, evaluated B.D. in September 2018.² Dr. Castillo diagnosed B.D. with Posttraumatic Stress Disorder (PTSD) stemming from his adverse childhood experiences. As a result of PTSD, B.D. avoids memories of or thinking about his trauma; views the world and others as unsafe; struggles to concentrate; has sleep disturbances and nightmares; displays hypervigilance and hyperarousal; and has disturbing and recurrent memories.

23. Dr. Castillo also diagnosed B.D. with Adjustment Disorder, which stems from his now prolonged detention in locked ORR facilities. Dr. Castillo opines that the cause of B.D.’s Adjustment Disorder is B.D.’s prolonged separation from his mother and his exposure to “violence and other negative detention conditions” in ORR’s facilities. Dr. Castillo believes that “at this point, detention conditions are perpetuating B.D.’s adjustment disorder, and contributing to his psychological and social deterioration.”

24. Dr. Castillo believes that B.D. is not legally competent. She is familiar with the competence standard set forth in *Dusky v. United States*, 362 U.S. 402 (1960), and her reports includes an advisory opinion that B.D. is not competent under that standard. She opines that B.D. has impaired capacities regarding his knowledge and appreciation of the nature and object of the immigration and other legal proceedings including charges, penalties, and the role of key courtroom officials. He has difficulty reasoning through issues related to his care and immigration process. He also has an impaired capacity to provide a coherent narrative of his life, act in his own interest, and assist his attorney towards his defense.

Dr. Castillo also believes that B.D.’s competence “could be restored in the future” if he receives

² Petitioners submit Dr. Castillo’s evaluation with their Motion for a Preliminary Injunction.

1 treatment “in a place where he feels safe to learn and trust others.”

2 25. Dr. Castillo administered the Structured Assessment of Violence Risk in Youth in
3 the course of evaluating B.D. Interpreting those results, Dr. Castillo opines that B.D.’s “risk for
4 future violence falls within the moderate range if he is locked in a juvenile facility and falls
5 within the low range if he is at home with family.” Thus, according to this assessment, releasing
6 B.D. to his mother’s care would *decrease* the risk that B.D. may be involved in future violence.

7 26. Dr. Castillo opines that B.D. should receive outpatient “trauma-informed care in a
8 situation where he does not experience environmental triggers for his trauma and does not face
9 physical or chemical restraints.” Her reports note that “being restrained on the floor with a guard
10 on top of him can be reminiscent of the trauma he endured and can significantly worsen his
11 psychological functioning.”

12 27. Dr. Castillo’s assessment is consistent with B.D.’s history. The Guatemalan
13 psychologist who treated B.D. about six years ago also believed that his mental health-related
14 needs stemmed from the sexual abuse he suffered as a child. While in ORR custody, various
15 clinicians evaluated B.D. and, while their diagnoses varied, several diagnosed severe PTSD.

16 **C. ORR has detained B.D. in locked juvenile detention facilities for over ten**
17 **months.**

18 28. B.D., already suffering from significant PTSD, journeyed to the United States in
19 the late fall of 2017. He was apprehended by immigration officials on or about December 9, 2017.
20 Even though he arrived with his adult sisters, immigration officials classified him as an
21 unaccompanied minor child under 6 U.S.C. § 279(g)(2) and placed him in child welfare custody
22 with ORR. He arrived at his first ORR “placement” on December 12, 2017.

23 29. At that point, ORR was charged with—and still has—a statutory obligation to
24 “promptly” place B.D. “in the least restrictive setting that is in [his] best interest[s].” 8 U.S.C.
25 § 1232(c)(2)(A). ORR may not place any child “in a secure facility absent a determination that
26 the child poses a danger to self or others or has been charged with having committed a criminal
27 offense.” *Id.*

30. Much of ORR's policy is governed by the settlement in *Flores v. Whitaker*.³ The *Flores* Settlement culminated several years of class-action litigation regarding the rights of immigrant children in government custody. The settlement governs the rights of "[a]ll minors who are detained in the legal custody of the INS." Ex. B, *Flores* Settlement at ¶ 10. (The INS no longer exists, and its relevant statutory functions have been transferred to ORR.) The settlement remains a binding agreement between the plaintiff class—of which B.D. is a member—and the government.

31. The *Flores* Settlement provides that "[w]here the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay, in the following order of preference." *Flores* Settlement at ¶ 14. The first-listed preference category is "a parent." *Id.* at ¶ 14(A).

32. In sum, 8 U.S.C. § 1232 and the *Flores* Settlement require ORR (1) to act promptly by (2) placing any child in its custody in the least restrictive setting that is in the child's best interest which (3) must be the child's parent, if available, so long as an alternative placement is not required to secure the child's presence in immigration court or to ensure the child's safety or the safety of others. In this system, the adult to whom the child is released (i.e. the parent) is known as the "sponsor" and her home is known as the "placement." If the child does not have a sponsor available, the child's placement is generally a shelter, medium-security residential treatment center, or, as in this case, a secure juvenile hall.

33. ORR first placed B.D. at Casa Padre, a former Walmart converted into a youth shelter in Brownsville, Texas. B.D. was placed at Casa Padre for approximately ten days. On information and belief, ORR failed to adequately screen B.D. for mental health-related disabilities upon his arrival at Casa Padre.

34. B.D. did not engage in aggressive behavior while at Casa Padre. However, ORR alleges that while there B.D. stated that he was once a member of the "Mara 18" gang, he had

³ *Flores v. Sessions*, No. 85-cv-4544 (C.D. Cal.). The *Flores* Settlement is attached hereto as Exhibit B.

1 assaulted a man in Guatemala, and that the Guatemalan police filed criminal charges against him.
 2 This statement is false. As ORR's later records note, "due to the youth's mental health condition,
 3 his descriptions are not to be taken as fact and must be corroborated with other sources." ORR
 4 would also come to understand that B.D. may imitate other residents or be provoked by other
 5 residents to use gang signs. Nevertheless, solely based on this purported admission, ORR
 6 "stepped up" B.D. to a "secure" facility, the Northern Virginia Juvenile Detention Center
 7 (NOVA)—and ORR has kept B.D. in secure facilities ever since. Such secure facilities are the
 8 most restrictive placement settings available to ORR. Upon information and belief, ORR failed to
 9 provide B.D. or Ms. Cotto Yoc with notice and an opportunity to respond to its decision to step
 10 B.D. up into a locked facility.

11 35. B.D. has been locked away in juvenile detention facilities since he entered NOVA
 12 on December 19, 2017. ORR transferred B.D. to another secure facility, the Yolo County Juvenile
 13 Detention Facility, on July 27, 2018, and he has remained detained there since that date.

14 36. Conditions at Yolo are terrible. In his letter to the Court accompanying this
 15 Petition and Complaint, B.D. writes that

16 At this moment, I am in a jail in California. I do not like being here. My room has
 17 a locked door. We spend many hours in our rooms with the doors locked. Each
 18 day, we spend one hour and no more outside where we play basketball. Sometimes
 19 there are fights between the boys as they play. There are also fights inside the
 building. The food is bad and I do not like it. I think I have eaten a simple
 sandwich as my lunch every day I have been here.

20 Ex. C, Petitioner B.D.A.C.'s October 25, 2018 Letter to the Court. A recent Ninth Circuit opinion
 21 recites that "Hector," another youth detained there:

22 describes the Yolo facility as a "real prison," where the juvenile detainees were
 23 treated "badly, like delinquents." Hector recalled in his declaration how the guards
 would "lock us up in the cells every night, to sleep on benches made out of cement
 24 with mattresses," and said that the "entire time, we live[d] locked up."

25 ...

26 In his declaration written while still held at Yolo, Hector wrote that "I feel
 desperate ... [m]y only wish is to leave detention, live with my mom, and study."

27 *Flores v. Sessions*, 862 F.3d 863, 872 (9th Cir. 2017).

28 37. Consistent with Dr. Castillo's diagnosis of Adjustment Disorder, B.D.'s mental

1 health has deteriorated while he has been detained in locked facilities. On an unknown date, an
2 unidentified ORR staff prescribed psychotropic drugs to B.D. for unspecified reasons; when she
3 reviewed B.D.'s medical records, Dr. Castillo noted that when she reviewed B.D.'s medical file
4 she was unable to locate "any notes regarding which conditions or symptoms the drugs were
5 being prescribed for." ORR's records also indicate around this time that B.D. began to express
6 suicidal thoughts and engaged in some self-harm. In March 2018, ORR obtained an order from a
7 Virginia state court committing B.D. to a psychiatric facility. Upon information and belief, B.D.
8 was under the influence of psychotropic medications prescribed by ORR at the time ORR sought
9 his commitment.

10 38. B.D. was released back to ORR custody about a week after his Virginia
11 commitment. Upon information and belief, at discharge, while ORR was advised that B.D. did
12 not need to continue psychotropic medication, ORR has continued to provide psychotropic
13 medication to B.D. since then. On several occasions, B.D. has acted aggressively toward others in
14 the facilities where he is confined. In response, ORR staff have restrained B.D. in various ways,
15 including using armbars and a "restraint chair." Dr. Castillo opines that these "environmental
16 triggers" mimic the traumas he endured in Guatemala and "can significantly worsen his
17 psychological functioning."

18 39. Aggressive behavior is inconsistent with B.D.'s life history in Guatemala, and in
19 Dr. Castillo's opinion "being detained has triggered his self-harming behavior and
20 aggressiveness." Dr. Castillo opines that B.D.'s prolonged detention is the cause of these
21 behaviors and that B.D. "would benefit from being released from his current detention facility
22 and being reunited with his mother and siblings as many of his psychiatric difficulties are
23 connected to being separated from his family."

24 40. B.D.'s prolonged detention in locked ORR facilities has caused him and Ms. Cotto
25 Yoc substantial mental pain and anguish. In his letter to the Court, B.D. writes:

26 My mom and family live in Ohio. I want to leave the jail and live with them. I
27 think about them always and I miss them a lot. When I think about them, I feel bad
28 and I want to hug my relatives. In my mom's house, I feel safe. Since I have been
here, I talk with my mother very infrequently. I do not remember speaking with

1 my sisters since I have been here and I remember speaking with my brother once.
 2 When I was living in my country, I spoke with my mother almost every day. If I
 3 leave here, I want to play soccer with my brother in the park and watch movies
 4 with my family like we used to do in my country.

5 Ex. C, Petitioner B.D.A.C.'s October 25, 2018 Letter to the Court. Ms. Cotto Yoc's feelings are
 6 similar. She declares:

7 I cannot adequately describe in words the anguish that B.D.A.C.'s detention has
 8 caused me. My son has not had a good chance at life. He has been raped by a
 9 stranger. He has been drugged and kidnapped by a gang. He was abused by his
 10 father and grandmother. My family came to the United States because this country
 11 is a safe haven for people in need, but the U.S. government has kept my son in a
 12 locked jail cell for over ten months. My son is suffering. He is not receiving the
 13 mental health and medical treatment I know he needs—treatment that I have been
 14 willing and capable of arranging for him since he was eleven and we lived in
 15 Guatemala and that I have arranged for him to receive in Ohio. On the phone, I can
 16 tell that he sounds depressed. I am depressed about the situation. As a mother, my
 17 goal is to give my children a better chance at life than I have had. I want to shield
 18 them from the abuse that I and they have suffered, and I cannot do that through
 19 locked doors. I think about B.D.A.C. every day and cannot wait for the day our
 20 family is reunited.

21 Ex. A, Cotto Yoc Decl. at ¶ 23.

22 **D. Respondents have unlawfully failed to adjudicate Petitioners' family-**
 23 **reunification request and have unlawfully failed to promptly place B.D. in the**
 24 **least restrictive setting that is in his best interest.**

25 41. Ms. Cotto Yoc first notified ORR of her intent to sponsor B.D.'s release and to
 26 reunite her family on or about December 13, 2017. But ORR unreasonably delayed the
 27 reunification process. For example, ORR generally conducts "home studies" of the proposed
 28 sponsor's residence, and the author of the home study makes a recommendation for or against
 release to the sponsor. Here, ORR unreasonably delayed conducting a home study of Ms. Cotto
 Yoc's home until June 13, 2018—six months after she first requested that her son be returned to
 her care. Then, the ORR contractor who authored the Home Study Report unreasonably
 recommended against releasing B.D. into his mother's care. But this recommendation is not a
 final agency action, and ORR has never issued a final agency action regarding Ms. Cotto Yoc's
 family-reunification request. Consequently, B.D. and his mother have lived in a bureaucratic
 limbo for months, unable to ask if or when an administrative appeal will be available, as they
 await adjudication of their request by an official in Washington D.C. with whom they have no

1 contact. In written correspondence, ORR has confirmed that the decision of whether to release
2 B.D. to Ms. Cotto Yoc has been pending with Respondent Lloyd since before July 27, 2018. By
3 any standard, Respondent Lloyd's failure to act on the family-reunification request is
4 unreasonably delayed.

5 42. By contrast, Ms. Cotto Yoc has complied with all ORR's requirements for
6 sponsorship and completed her reunification application. At ORR's request, she has twice
7 provided her fingerprints for background investigations. She opened her home to ORR's social
8 worker for the home study. When she learned the basis for the ORR contractor's recommendation
9 against release, Ms. Cotto Yoc addressed all points of concern. For example, the ORR social
10 worker stated that her recommendation against release was made "[d]ue to the youth's significant
11 mental health concerns and behavioral issues" and that her view "at this time the sponsor does not
12 appear prepared to care for the youth's mental health needs." Since learning of this concern, Ms.
13 Cotto Yoc enrolled B.D. to receive mental health services upon his release. Attached to this
14 Complaint as Exhibit D is confirmation that Catholic Charities of Southwestern Ohio has agreed
15 to provide B.D. with mental health treatment, medication management, case management, and
16 classes to promote general health upon his release to his mother. This treatment plan is consistent
17 with the treatment recommendations in Dr. Castillo's evaluation. Ms. Cotto Yoc addressed other
18 concerns articulated in the Home Study Report. For example, the Report's author recommended
19 that Ms. Cotto Yoc enroll in parenting classes. She has done so. Ex. D, Enrollment Verifications.

20 43. B.D. and Ms. Cotto Yoc have taken reasonable steps to resolve this issue without
21 judicial intervention. On September 10, 11, and 27, Ms. Cotto Yoc, through counsel, asked the
22 ORR contractors managing B.D.'s case about the status of her family-reunification request and
23 whether she could take steps to complete or speed its resolution. The ORR contractors did not
24 provide a timeline for ORR's expected decision or give any meaningful information.

25 44. On October 31, 2018, Ms. Cotto Yoc, through counsel, provided Respondent
26 Smith with correspondence that set forth the facts in this Petition and Complaint and requested
27 that ORR promptly adjudicate the pending family-reunification petition. The correspondence also
28 described how Ms. Cotto Yoc addressed the concerns raised in the Home Study Report. On

November 7, Respondent Smith replied confirming that the release request has been pending with Respondent Lloyd for over three months but providing no timeline for ORR to make a decision.

E. Respondents' handling of Ms. Cotto Yoc's family-reunification request violates the Administrative Procedures Act.

45. When he became ORR Director in 2017, Respondent Lloyd implemented a new policy known as the "director-review policy." Under this policy, Respondent Lloyd reserved for himself, or a designee, the decision of whether to release any youth in ORR custody who was or ever had been detained in a secure or staff-secure facility.

46. A court of the Southern District of New York vacated the director-release policy on June 27, 2018. *See L.V.M. v. Lloyd*, 318 F. Supp. 3d 601 (S.D.N.Y. 2018). The following day, ORR changed its policy such that (1) Respondent Lloyd (or a designee) no longer had to personally approve any release decision pertaining to a child who was or had been detained in an ORR secure or staff-secure facility and instead (2) local Federal Field Specialists would make release decisions for that population. Per this policy shift, any decision pending with Respondent Lloyd on June 28, 2018, was transferred to the relevant FFS.

47. A Federal Field Specialist submitted a release recommendation concerning B.D. to Respondent Lloyd, and that recommendation was submitted and/or was pending with Respondent Lloyd on or after June 28, 2018. On information and belief, B.D.'s release decision should be been remanded to an FFS pursuant to the June 28 policy change but was not.

F. Respondents' unlawful delay in releasing B.D. is discrimination on the basis of disability.

48. Section 504 of the Rehabilitation Act, codified at 29 U.S.C. § 794, protects qualified individuals with disabilities against discrimination in the administration of federal or federally funded programs. HHS has promulgated regulations implementing Section 504's mandate at 45 C.F.R. § 84.4.

49. ORR's purported child-welfare custody of B.D., including its program releasing unaccompanied children to eligible sponsors, is a "program or activity" conducted by an executive-branch agency and is thus a covered program within the meaning of Section 504.

1 50. B.D. is a qualified individual within the meaning of Section 504 because he suffers
2 from PTSD and Adjustment Disorder.

3 51. Respondents administer ORR's child welfare program, including its program
4 releasing unaccompanied children to eligible sponsors, using methods of administration that
5 discriminate on the basis of disability. These policies also have the effect of substantially
6 impairing accomplishment of the objective of release to an appropriate sponsor with respect to
7 children with disabilities.

8 52. As a matter of policy and practice, ORR steps up children who need mental health
9 services and supports, or whom shelter staff believe need such services and supports, to more
10 restrictive placements, including secure facilities. In this case, ORR stepped up B.D. to a secure
11 facility on the basis of disability.

12 53. B.D.'s placement in secure facilities has delayed his release to Ms. Cotto Yoc. On
13 information and belief, as a matter of policy and practice, ORR refuses to release children placed
14 in a secure facility until Respondent Lloyd or his designee approves release, prolonging
15 children's detention for weeks or months even when parents or other reputable custodians are
16 available to care for them. Additionally, prolonged detention of children with behavioral or
17 mental health disabilities can exacerbate their disabilities and result in deterioration of their
18 mental health. As Dr. Castillo opines, by placing B.D. in restrictive settings and prolonging his
19 detention and separation from his family, Respondents exacerbated his symptoms, making it less
20 likely that he will be approved for release and thereby prolonging his detention. Thus, by placing
21 B.D. in restrictive settings because of disability, Respondents caused his prolonged separation
22 from his families because of his disability.

23 54. Collectively, Respondents' methods of administration have the effect of
24 discriminating against B.D. and substantially impairing accomplishment of the objectives of
25 ORR's programs and activities with respect to B.D. in violation of Section 504. Further,
26 Respondents fail to make reasonable accommodations in policies, practices, and procedures that
27 are necessary to avoid discrimination on the basis of disability, further subjecting B.D. to
28 prolonged detention and separation from his family based on his disabilities.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

**VIOLATION OF FIFTH AMENDMENT RIGHT TO SUBSTANTIVE DUE PROCESS
(Asserted by Petitioner B.D.A.C. against both Respondents)**

55. B.D. incorporates the allegations in Paragraphs 1 through 54 as if fully set forth herein.

56. The substantive component of the Due Process Clause of the Fifth Amendment to the United States Constitution protects B.D.'s liberty interests. B.D. has a substantive liberty interest in being free from confinement. He also has a substantive liberty interest in family integrity.

57. Respondents' policies and actions, as set forth above, have infringed upon B.D.'s substantive liberty interest in being free from confinement. These policies and actions have caused a period of prolonged confinement in locked detention facilities without any allegation of criminal wrong-doing or juvenile delinquency or otherwise being related to a government need, shocking the conscience.

58. Respondents' policies and actions, as set forth above, have infringed upon B.D.'s substantive liberty interest in family integrity. These policies and actions have caused a period of prolonged separation between B.D. and his mother, shocking the conscience.

SECOND CLAIM FOR RELIEF

**VIOLATION OF FIFTH AMENDMENT RIGHT TO PROCEDURAL DUE PROCESS
(Asserted by Petitioner B.D.A.C. against both Respondents)**

59. B.D. incorporates the allegations in Paragraphs 1 through 58 as if fully set forth herein.

60. The procedural component of the Due Process Clause of the Fifth Amendment to the United States Constitution prevents the United States from depriving B.D. of liberty without procedural protections. It also prevents the United States from depriving B.D. of his right to family integrity with procedural protections.

61. Respondents' policies and actions, as set forth above, have deprived B.D. of freedom from confinement without providing him with notice, a right to counsel, an opportunity

1 to respond including an opportunity to present and confront evidence, a neutral decisionmaker, a
2 written decision, and a right of appeal.

3
4 **THIRD CLAIM FOR RELIEF**
5 **VIOLATION OF SECTION 235 OF THE TRAFFICKING VICTIMS PROTECTION**
6 **REAUTHORIZATION ACT, 8 U.S.C. § 1232**
7 **(Asserted by Petitioner B.D.A.C. against both Respondents)**

8 62. B.D. incorporates the allegations in Paragraphs 1 through 61 as if fully set forth
9 herein.

10 63. As delegees of the Secretary of Health and Human Services, Respondents have a
11 non-discretionary duty to promptly place B.D. in the least restrictive setting that is in his best
12 interests.

13 64. Respondents have failed to act promptly.

14 65. Respondents have failed to place B.D. in the least restrictive setting that is in his
15 best interests.

16 **FOURTH CLAIM FOR RELIEF**
17 **VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT**
18 **(Asserted by Petitioner B.D.A.C. against both Respondents)**

19 66. B.D. incorporates the allegations in Paragraphs 1 through 65 as if fully set forth
20 herein.

21 67. By elevating Ms. Cotto Yoc's family-reunification petition to Respondent Lloyd,
22 Respondents violated 5 U.S.C. § 706(b).

23 68. By failing to remand Ms. Cotto Yoc's family-reunification petition from
24 Respondent Lloyd to Respondent Smith, Respondents violated 5 U.S.C. § 706(b).

25 69. By failing to promptly adjudicate Ms. Cotto Yoc's family-reunification,
26 Respondents violated 5 U.S.C. § 706(1) & (2).

27 70. By failing to release B.D. to his mother's custody, as required by 8 U.S.C.
28 § 1232(c), Respondents violated 5 U.S.C. § 706(2).

///

FIFTH CLAIM FOR RELIEF
VIOLATION OF SECTION 504 OF THE REHABILITATION ACT
(Asserted by Petitioner B.D.A.C. against both Respondents)

71. B.D. incorporates the allegations in Paragraphs 1 through 70 as if fully set forth herein.

72. As a matter of policy and practice, Respondents placed B.D.—and cause B.D. to remain placed—in a locked facility because of his behavioral and mental health-related disabilities.

73. As a matter of policy and practice, Respondents have delayed and obstructed B.D.’s release because he is placed in a locked facility. Respondents have failed to reasonably accommodate B.D.’s disability.

SIXTH CLAIM FOR RELIEF
VIOLATION OF FIFTH AMENDMENT RIGHT TO SUBSTANTIVE DUE PROCESS
(Asserted by Petitioner Cotto Yoc against both Respondents)

74. Ms. Cotto Yoc incorporates the allegations in Paragraphs 1 through 73 as if fully set forth herein.

75. The substantive component of the Due Process Clause of the Fifth Amendment to the United States Constitution protects Ms. Cotto Yoc’s liberty interests. Ms. Cotto Yoc has a substantive liberty interest in family integrity.

76. Respondents’ policies and actions, as set forth above, have infringed upon Ms. Cotto Yoc’s substantive liberty interest in family integrity, causing prolonged separation between Ms. Cotto Yoc and her son, thus shocking the conscience.

SEVENTH CLAIM FOR RELIEF
VIOLATION OF FIFTH AMENDMENT RIGHT TO PROCEDURAL DUE PROCESS
(Asserted by Petitioner Cotto Yoc against both Respondents)

77. Ms. Cotto Yoc incorporates the allegations in Paragraphs 1 through 76 as if fully set forth herein.

78. The procedural component of the Due Process Clause of the Fifth Amendment to

1 the United States Constitution prevents the United States from depriving Ms. Cotto Yoc of family
2 integrity without procedural protections.

3 79. Respondents' policies and actions, as set forth above, have deprived Ms. Cotto
4 Yoc of her right to family integrity without providing her with notice, a right to counsel, an
5 opportunity to respond including an opportunity to present and confront evidence, a neutral
6 decisionmaker, a written decision, and a right of appeal.

7 **PRAYER FOR RELIEF**

8 Petitioners pray that the Court assume jurisdiction over this Petition and grant the
9 following relief:

10 A. A writ of habeas corpus directing Respondents to release B.D. to the care of his
11 mother.

12 B. An injunction compelling Respondents to release B.D. to the care of his mother.

13 C. A declaration that Respondents have violated B.D. and Ms. Cotto Yoc's
14 constitutional rights and B.D.'s statutory rights.

15 D. An award of attorneys' fees and costs to the extent permitted by law, including but
16 not limited to the Equal Access to Justice Act

17 E. Any other relief the Court deems to serve the interest of justice.
18

19 Dated: November 14, 2018

KEKER, VAN NEST & PETERS LLP

21 By: /s/ Travis Silva
SIMONA A. AGNOLUCCI
22 TRAVIS SILVA

23 Attorneys for Petitioners
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25
26
27
28

EXHIBIT A

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VERONICA LILIANA COTTO YOC
7

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 B.D.A.C., a minor, and VERONICA
11 LILIANA COTTO YOC, on behalf of
herself and B.D.A.C.,

12 Petitioners/Plaintiffs,

13 v.

14 SCOTT LLOYD, in his official capacity as
15 Director of the Office of Refugee
Resettlement, and ELICIA SMITH, in her
16 official capacity as Federal Field Specialist,
Office of Refugee Resettlement,

17 Respondents/Defendants.
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Case No. CaseNumber

**DECLARATION OF VERONICA
LILIANA COTTO YOC IN SUPPORT OF
PETITION FOR HABEAS CORPUS AND
APPLICATION FOR APPOINTMENT AS
GUARDIAN AD LITEM**

1 I, VERONICA LILIANA COTTO YOC, declare as follows:

2 1. I am the mother of B■■■■ D■■■■ A■■■■ C■■■■. My attorney has informed me that
3 in court my son will be referred to by his initials, and so I call him B.D.A.C. throughout this
4 declaration. I have initiated the above-captioned matter to obtain physical custody of B.D.A.C.
5 and to reunify my family. If called to testify in this matter, I would provide competent testimony
6 consistent with this declaration.

7 2. B.D.A.C. was born on ■■■■■ 2001. At that time, I lived near Guatemala
8 City, Guatemala, with B.D.A.C.'s father (then my partner) and with B.D.A.C.'s two older sisters.
9 About two years later, I had another child, a boy, with B.D.A.C.'s father. I was unmarried to
10 B.D.A.C.'s father, but we lived as a family for much of B.D.A.C.'s early childhood, until he was
11 about seven years old. These years were not happy ones for me, for B.D.A.C., or for his sisters.
12 B.D.A.C.'s father was physically and emotionally abusive toward me and toward my children. On
13 many occasions, and at certain times almost daily, B.D.A.C. saw his father hit and kick me.
14 B.D.A.C.'s father also frequently hit and kick B.D.A.C. B.D.A.C. was nevertheless generally
15 resilient as a young child. He was an average student with generally good behavior in school.

16 3. When B.D.A.C. was about seven, I separated from B.D.A.C.'s father to stop the
17 abuse that I and my children experienced. It was emotionally and financially difficult for me to
18 take this step because I knew how challenging single motherhood would be for me and for my
19 children. I nevertheless took the step of separating from B.D.A.C.'s father because I could no
20 longer stand seeing my children exposed to an abusive home environment, and I wanted to
21 protect them from further abuse.

22 4. I remained in the capital city to work. However, I knew I could not work enough
23 hours to support four children while simultaneously providing the supervision my younger
24 children needed. So, I sent my three youngest children to live with my mother in Malacatan, San
25 Marcos, Guatemala, which is located near the Guatemala/Mexico border, about five hours driving
26 from Guatemala City.

27 5. While my children lived with my mother, I nevertheless remained very involved in
28 their lives and continued to be the best mother I could be. I spoke with them frequently—virtually
every day—by telephone. I visited Malacatan about twice a month and twice a month I gave my

1 mother money for my children's well-being, to pay for their food, clothing, and school needs. I
2 remained especially close to B.D.A.C., who generally got along well with his older sister and
3 younger brother.

4 6. When B.D.A.C. was about nine years old, B.D.A.C.'s sister told me that my
5 mother was neglectful and abusive toward her, to B.D.A.C., and to his brother. My daughter told
6 me that the children were afraid of their grandmother. While I had been sending my mother
7 money for my children's well-being, she spend that money on herself and did not provide for my
8 children. She threatened my children and punished them physically.

9 7. When I learned that my mother was not providing a safe environment for my
10 children, I quickly took action. I ensured that I had a suitable living space for them in the
11 Guatemala City area and I brought them to live with me there. I knew that it would be difficult to
12 supervise my children while working the hours I needed to work to support them. But I could not
13 bear the thought of them continuing to suffer under my mother's roof, and I knew that their father
14 was not a suitable parent, so I made the sacrifices necessary to reunite my family.

15 8. Our landlord at the time was a man named Raul. He was friendly toward me and
16 my children. He would buy small gifts for the children and supervise them. I began to trust him
17 and, initially, my children seemed comfortable being around him. However, one day, B.D.A.C.
18 told me that he did not want to be around Raul anymore. From that point forward, I did not allow
19 Raul to be around my children, though I did not know exactly why Raul made B.D.A.C. feel
20 uncomfortable.

21 9. After living in the capital city for a few months, we moved to Malacatan, where
22 my children lived with me. Around this time, I noticed changes in B.D.A.C.'s behavior. For
23 example, he began bathing twice a day. Whereas B.D.A.C. had not previously acted out in school,
24 he now got into arguments with other students at school—always boys. He still would not tell me
25 what happened with Raul. I attempted to help B.D.A.C. work through his problems in the best
26 way that I could, but I was unable to get B.D.A.C. back on track. When B.D.A.C. was about
27 eleven, I sought professional help. Although it was very expensive, I arranged for B.D.A.C. to be
28 seen by a therapist. I came to learn from the therapist that Raul had serially raped B.D.A.C.
Although B.D.A.C. could not talk to me about the sexual abuse he suffered, he did speak openly

1 with this therapist. The therapist told me that, in layman's terms, even though B.D.A.C. was
2 eleven, he was stuck as a nine-year-old because that was his age when Raul raped him, and that
3 B.D.A.C. was not emotionally ready to leave that age.

4 10. I lived with B.D.A.C., his brother, and my younger daughter in Malacatan until the
5 fall of 2016, when B.D.A.C. was about fifteen and about to turn sixteen years old. During this
6 period, I worked hard to provide for my family and to ensure I was a present mother to my
7 children.

8 11. In the fall of 2016, I left Malacatan to travel to the United States. I traveled to the
9 United States with my youngest son. I did not bring B.D.A.C. with me. While I agonized over the
10 decision of whether to bring B.D.A.C. with us, I ultimately decided that it was in his best interests
11 to remain in Guatemala because of his generally vulnerable state. I arranged for B.D.A.C. to live
12 with his sister, my oldest daughter, in Tacana, Guatemala. My daughter then lived in Tacana with
13 her husband and their children, and, given B.D.A.C.'s struggles, I believed that it would be better
14 and easier for B.D.A.C. to remain in Guatemala with family rather than undertake the arduous
15 journey to a country we did not know.

16 12. When I came to the United States in 2016, I was arrested by immigration
17 authorities. After being detained, I passed a credible fear screening interview, meaning that an
18 asylum officer determined that I have a credible fear of future persecution in Guatemala and that I
19 may be eligible for asylum. When the immigration authorities released me from detention, they
20 required me to wear an ankle monitor and report for periodic check-ins with an immigration
21 official. I have complied with all requirements that the immigration authorities imposed upon me,
22 and after about six months, the officials removed the monitor from my ankle and eventually
23 reduced the frequency of my check-ins. My first immigration court date is in early 2019, and I
24 intend to continue with the asylum application process.

25 13. B.D.A.C. lived with my daughter from the fall of 2016, when I left Guatemala,
26 until about April 2017. Even from the United States, I did everything I could to support him and
27 be the best mother I could be. Once I arrived in the United States, I spoke with B.D.A.C. daily by
28 phone. I sent money so that my daughter could provide for him. B.D.A.C., however, lost interest

1 in school, and it was difficult to motivate him to study, attend classes, or work. I worried about
2 my son's well-being and encouraged him to return to school.

3 14. In or around April 2017, I called my daughter to speak with her and B.D.A.C. My
4 daughter informed me that, with his father's approval, B.D.A.C. had left and gone to Guatemala
5 City to live with his father. I did not approve of this decision, but from the United States I was
6 unable to stop it from occurring. Instead, I called B.D.A.C.'s father to speak with him about the
7 importance of being a present parent to B.D.A.C. We spoke about the financial commitment he
8 would have to make to provide for B.D.A.C. His father assured me that he understood what he
9 needed to do and that he would be a good father to B.D.A.C.

10 15. Unfortunately, as he had done before, B.D.A.C.'s father let me—and, more
11 importantly, B.D.A.C.—down. He did not provide for B.D.A.C., who at one point was reduced to
12 begging for food. I recall that on a Friday in the fall of 2017, B.D.A.C. called me and told me he
13 was hungry because his father had not worked and did not have money for food. I told him to go
14 to the house of a friend of mine and to ask for money. (I immediately called my friend and asked
15 her for a loan of twenty quetzales (or about \$2.50), which she agreed to give to B.D.A.C.)
16 B.D.A.C. bought meat and eggs with the money and, being the sweet child he fundamentally is,
17 he shared this food and the remaining money with his father.

18 16. I understand that, instead of being grateful for his son's sharing spirit, B.D.A.C.'s
19 father was mad at B.D.A.C., accusing his son of holding out money. B.D.A.C. apparently left the
20 house to avoid an argument with his father. Soon thereafter, B.D.A.C. disappeared. Throughout
21 the weekend, I asked my daughter and B.D.A.C.'s father to look for him. My daughter did so (his
22 father did not), but to no avail. When on Monday morning, B.D.A.C. had not been found, I called,
23 from the United States, the authorities in Guatemala to report B.D.A.C.'s disappearance. I sent
24 money to my daughter to print out signs with his photograph, which my daughter posted
25 throughout the capital city. I then received a ransom phone call from gang members, demanding
26 payment for B.D.A.C.'s release. I reported this phone call to the police and soon thereafter the
27 police located B.D.A.C., who was in a drugged state and wearing someone else's clothing when
28 he was found. The police returned B.D.A.C. to my daughter after determining that B.D.A.C.'s
father was not a fit parent.

1 17. After B.D.A.C. was found, my daughter continued to receive threatening phone
2 calls from gang members, known as “mareros,” demanding payment and threatening my family.
3 The callers told my daughter, who lives several hours driving from the capital city, that they
4 would kill or kidnap our family if we did not pay them. I was extremely concerned for my
5 family’s safety and advised them to take precautions to protect themselves.

6 18. Unbeknownst to me, in late 2017 my daughter decided to flee Guatemala and to
7 travel to the United States. She traveled with B.D.A.C., along with her husband and their
8 children. I only came to know that they had undertaken the journey when in December 2017 I
9 received a series of urgent phone calls from immigration authorities along the U.S./Mexico border
10 informing me about my family members’ arrests and detention.

11 19. My daughter and her children were released after just a few days of detention and
12 processing. But the government kept B.D.A.C. in detention. In December 2017 he was transferred
13 to a juvenile detention facility in Virginia. While he was at that facility, I spoke with him almost
14 daily. But in late July, the government transferred him to a juvenile detention facility in
15 California. It is much harder for me to arrange to talk to B.D.A.C. in the California facility. I
16 estimate that since late July, I have only been permitted to speak with my son about once a week.
17 My son has told me that in both Virginia and California, he has lived in locked jail cells.

18 20. Within the first month of B.D.A.C.’s detention, I explained that I wanted the
19 government to release B.D.A.C. to live with me, just as the government had released my daughter
20 and grandchildren. I have complied with every request that I understand the government to have
21 made of me. I and my daughter have submitted our fingerprints as part of a background check—
22 in my case, I’ve done so twice. I have submitted to an inspection of my home by a social worker.
23 When I was told that I needed to take parenting classes to be considered a fit parent for B.D.A.C.,
24 I signed up for the classes through a local non-profit organization. I am scheduled to start those
25 classes on October 29. When I was told that B.D.A.C. would need counseling services when
26 released from detention, I pre-registered B.D.A.C. for counseling services and have been told that
27 B.D.A.C. will receive counseling when he arrives in Ohio. I have taken every step I know to take
28 to get my son back, but none has resulted in getting B.D.A.C. home to live with me and his
family.

1 21. I initially told the government that I wanted to be reunited with B.D.A.C. in
2 December 2017 and the government inspected my home on June 13, 2018. Yet, I understand that
3 the government still has not made a decision about whether to release B.D.A.C. from detention
4 and to allow him to live with me. No government official has explained to me why it has taken
5 almost a year to process my request for B.D.A.C.'s release.

6 22. I am informed that the government states that B.D.A.C. has admitted to being a
7 member of a gang in Guatemala. This is unequivocally false. B.D.A.C. is not a gang member.
8 From the time he was nine until when he turned fifteen, B.D.A.C. lived with me—and from the
9 time he was eleven, we lived in Malacatan, far from Guatemala City. I supervised B.D.A.C.'s
10 activities during this time, and he was not involved with gang activities. From the fall of 2016 to
11 about April 2017, B.D.A.C. lived with my daughter in Tacana, far from Guatemala City. During
12 this period, I was in daily contact with B.D.A.C. by phone and my daughter personally supervised
13 him. He was uninvolved in gang activities during this time period. From April 2017 until his
14 kidnapping, I spoke with B.D.A.C. as frequently as I could, usually weekly, and he lived with his
15 father, who I have never known to be involved with gang activities. I am aware of no indication
16 that B.D.A.C. was involved in any gang activity during this period. Notably, when the
17 Guatemalan police found B.D.A.C., they treated him as a victim of gang violence rather than as a
18 criminal suspect; indeed, I possess a certificate from the Guatemalan police that B.D.A.C. has no
19 criminal record in Guatemala.

20 23. I cannot adequately describe in words the anguish that B.D.A.C.'s detention has
21 caused me. My son has not had a good chance at life. He has been raped by a stranger. He has
22 been drugged and kidnapped by a gang. He was abused by his father and grandmother. My family
23 came to the United States because this country is a safe haven for people in need, but the U.S.
24 government has kept my son in a locked jail cell for over ten months. My son is suffering. He is
25 not receiving the mental health and medical treatment I know he needs—treatment that I have
26 been willing and capable of arranging for him since he was eleven and we lived in Guatemala and
27 that I have arranged for him to receive in Ohio. On the phone, I can tell that he sounds
28

1 depressed. I am depressed about the situation. As a mother, my goal is to give my children a
2 better chance at life than I have had. I want to shield them from the abuse that I and they have
3 suffered, and I cannot not do that through locked doors. I think about B.D.A.C. every day and
4 cannot wait for the day our family is reunited. I recognize that my son and I are in removal
5 proceedings. I am confident in our cases, but I also recognize that there is a risk that we will not
6 be permitted to live in the United States. Every day I pray that we will face these proceedings
7 together and that, whether it is here or in Guatemala, we will be able to live as a family.

8
9 I declare under penalty of perjury under the laws of the State of Ohio that the foregoing is
10 true and correct and that this declaration was executed on the 24th day of October, 2018, in
11 Cincinnati, Ohio.

12
13 Veronica Cotto
14 Veronica Lilliana Cotto Yoc
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EXHIBIT B

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JENNY LISETTE FLORES, et al, Plaintiffs

v.

JANET RENO, Attorney General of the United States, et al., Defendants

Case No. CV 85-4544-RJK(Px)

STIPULATED SETTLEMENT AGREEMENT

WHEREAS, Plaintiffs have filed this action against Defendants, challenging, *inter alia*, the constitutionality of Defendants' policies, practices and regulations regarding the detention and release of unaccompanied minors taken into the custody of the Immigration and Naturalization Service (INS) in the Western Region; and

WHEREAS, the district court has certified this case as a class action on behalf of all minors apprehended by the INS in the Western Region of the United States; and

WHEREAS, this litigation has been pending for nine (9) years, all parties have conducted extensive discovery, and the United States Supreme Court has upheld the constitutionality of the challenged INS regulations on their face and has remanded for further proceedings consistent with its opinion; and

WHEREAS, on November 30, 1987, the parties reached a settlement agreement requiring that minors in INS custody in the Western Region be housed in facilities meeting certain standards, including state standards for the housing and care of dependent children, and Plaintiffs' motion to enforce compliance with that settlement is currently pending before the court; and

WHEREAS, a trial in this case would be complex, lengthy and costly to all parties concerned, and the decision of the district court would be subject to appeal by the losing parties with the final outcome uncertain; and

WHEREAS, the parties believe that settlement of this action is in their best interests and best serves the interests of justice by avoiding a complex, lengthy and costly trial, and subsequent appeals which could last several more years;

NOW, THEREFORE, Plaintiffs and Defendants enter into this Stipulated Settlement Agreement (the Agreement), stipulate that it constitutes a full and complete resolution of the issues raised in this action, and agree to the following:

I DEFINITIONS

As used throughout this Agreement the following definitions shall apply:

1. The term "party" or "parties" shall apply to Defendants and Plaintiffs. As the term applies to Defendants, it shall include their agents, employees, contractors and/or successors in office. As the term applies to Plaintiffs, it shall include all class members.
2. The term "Plaintiff" or "Plaintiffs" shall apply to the named plaintiffs and all class members.
3. The term "class member" or "class members" shall apply to the persons defined in Paragraph 10 below.
4. The term "minor" shall apply to any person under the age of eighteen (18) years who is detained in the legal custody of the INS. This Agreement shall cease to apply to any person who has reached the age of eighteen years. The term "minor" shall not include an emancipated minor or an individual who has been incarcerated due to a conviction for a criminal offense as an adult. The INS shall treat all persons who are under the age of eighteen but not included within the definition of "minor" as adults for all purposes, including release on bond or recognizance.
5. The term "emancipated minor" shall refer to any minor who has been determined to be emancipated in an appropriate state judicial proceeding.
6. The term "licensed program" shall refer to any program, agency or organization that is licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children, including a program operating group homes, foster homes, or facilities for special needs minors. A licensed program must also meet those standards for licensed programs set forth in Exhibit 1 attached hereto. All homes and facilities operated by licensed programs, including facilities for special needs minors, shall be non-secure as required under state law; provided, however, that a facility for special needs minors may maintain that level of security permitted under state law which is necessary for the protection of a minor or others in appropriate circumstances, *e.g.*, cases in which a minor has drug or alcohol problems or is mentally ill. The INS shall make reasonable efforts to provide licensed placements in those geographical areas where the majority of minors are apprehended, such as southern California, southeast Texas, southern Florida and the northeast corridor.

7. The term "special needs minor" shall refer to a minor whose mental and/or physical condition requires special services and treatment by staff. A minor may have special needs due to drug or alcohol abuse, serious emotional disturbance, mental illness or retardation, or a physical condition or chronic illness that requires special services or treatment. A minor who has suffered serious neglect or abuse may be considered a minor with special needs if the minor requires special services or treatment as a result of the neglect or abuse. The INS shall assess minors to determine if they have special needs and, if so, shall place such minors, whenever possible, in licensed programs in which the INS places children without special needs, but which provide services and treatment for such special needs.

8. The term "medium security facility" shall refer to a facility that is operated by a program, agency or organization licensed by an appropriate State agency and that meets those standards set forth in Exhibit 1 attached hereto. A medium security facility is designed for minors who require close supervision but do not need placement in juvenile correctional facilities. It provides 24-hour awake supervision, custody, care, and treatment. It maintains stricter security measures, such as intensive staff supervision, than a facility operated by a licensed program in order to control problem behavior and to prevent escape. Such a facility may have a secure perimeter but shall not be equipped internally with major restraining construction or procedures typically associated with correctional facilities.

II SCOPE OF SETTLEMENT, EFFECTIVE DATE, AND PUBLICATION

9. This Agreement sets out nationwide policy for the detention, release, and treatment of minors in the custody of the INS and shall supersede all previous INS policies that are inconsistent with the terms of this Agreement. This Agreement shall become effective upon final court approval, except that those terms of this Agreement regarding placement pursuant to Paragraph 19 shall not become effective until all contracts under the Program Announcement referenced in Paragraph 20 below are negotiated and implemented. The INS shall make its best efforts to execute these contracts within 120 days after the court's final approval of this Agreement. However, the INS will make reasonable efforts to comply with Paragraph 19 prior to full implementation of all such contracts. Once all contracts under the Program Announcement referenced in Paragraph 20 have been implemented, this Agreement shall supersede the agreement entitled Memorandum of Understanding Re Compromise of Class Action: Conditions of Detention (hereinafter "MOU"), entered into by and between the Plaintiffs and Defendants and filed with the United States District Court for the Central District of California on November 30, 1987, and the MOU shall thereafter be null and void. However, Plaintiffs shall not institute any legal action for enforcement of the MOU for a six (6) month period commencing with the final district court approval of this Agreement, except that Plaintiffs may institute enforcement proceedings if the Defendants have engaged in serious violations of the MOU that have caused irreparable harm to a class member for which injunctive relief would be appropriate. Within 120 days of the final district court approval of this Agreement, the INS shall

initiate action to publish the relevant and substantive terms of this Agreement as a Service regulation. The final regulations shall not be inconsistent with the terms of this Agreement. Within 30 days of final court approval of this Agreement, the INS shall distribute to all INS field offices and sub-offices instructions regarding the processing, treatment, and placement of juveniles. Those instructions shall include, but may not be limited to, the provisions summarizing the terms of the Agreement attached hereto as Exhibit 2.

III CLASS DEFINITION

10. The certified class in this action shall be defined as follows: "All minors who are detained in the legal custody of the INS."

IV STATEMENTS OF GENERAL APPLICABILITY

11. The INS treats, and shall continue to treat, all minors in its custody with dignity, respect and special concern for their particular vulnerability as minors. The INS shall place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with its interests to ensure the minor's timely appearance before the INS and the immigration courts and to protect the minor's well-being and that of others. Nothing herein shall require the INS to release a minor to any person or agency whom the INS has reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

V PROCEDURES AND TEMPORARY PLACEMENT FOLLOWING ARREST

12. Whenever the INS takes a minor into custody, it shall expeditiously process the minor and shall provide the minor with a notice of rights, including the right to a bond redetermination hearing if applicable. Following arrest, the INS shall hold minors in facilities that are safe and sanitary and that are consistent with the INS's concern for the particular vulnerability of minors. Facilities will provide access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will segregate unaccompanied minors from unrelated adults. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours. If there is no one to whom the INS may release the minor pursuant to Paragraph 14, and no appropriate licensed program is immediately available for placement pursuant to Paragraph 19, the minor may be placed in an INS detention facility, or other INS-contracted facility, having separate accommodations for minors, or a State or county juvenile detention facility. However, minors shall be separated from delinquent offenders. Every effort must be taken to ensure that the safety and well-being of the minors detained in these facilities are satisfactorily provided for by the staff. The INS will transfer a minor from a placement under this paragraph to a placement under Paragraph 19 (i) within three (3) days, if the minor

was apprehended in an INS district in which a licensed program is located and has space available; or (ii) within five (5) days in all other cases; except:

1. as otherwise provided under Paragraph 13 or Paragraph 21;
2. as otherwise required by any court decree or court-approved settlement;
3. in the event of an emergency or influx of minors into the United States, in which case the INS shall place all minors pursuant to Paragraph 19 as expeditiously as possible; or
4. where individuals must be transported from remote areas for processing or speak unusual languages such that the INS must locate interpreters in order to complete processing, in which case the INS shall place all such minors pursuant to Paragraph 19 within five (5) business days.

B. For purposes of this Paragraph, the term "emergency" shall be defined as any act or event that prevents the placement of minors pursuant to Paragraph 19 within the time frame provided. Such emergencies include natural disasters (e.g., earthquakes, hurricanes, etc.), facility fires, civil disturbances, and medical emergencies (e.g., a chicken pox epidemic among a group of minors). The term "influx of minors into the United States" shall be defined as those circumstances where the INS has, at any given time, more than 130 minors eligible for placement in a licensed program under Paragraph 19, including those who have been so placed or are awaiting such placement.

C. In preparation for an "emergency" or "influx," as described in Subparagraph B, the INS shall have a written plan that describes the reasonable efforts that it will take to place all minors as expeditiously as possible. This plan shall include the identification of 80 beds that are potentially available for INS placements and that are licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children. The plan, without identification of the additional beds available, is attached as Exhibit 3. The INS shall not be obligated to fund these additional beds on an ongoing basis. The INS shall update this listing of additional beds on a quarterly basis and provide Plaintiffs' counsel with a copy of this listing.

13. If a reasonable person would conclude that an alien detained by the INS is an adult despite his claims to be a minor, the INS shall treat the person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require the alien to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor in accordance with this Agreement for all purposes.

VI GENERAL POLICY FAVORING RELEASE

14. Where the INS determines that the detention of the minor is not required either to secure his or her timely appearance before the INS or the immigration court, or to ensure the minor's safety or that of others, the INS shall release a minor from its custody without unnecessary delay, in the following order of preference, to:

- A. a parent;**
- B. a legal guardian;**
- C. an adult relative (brother, sister, aunt, uncle, or grandparent);**
- D. an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer or (ii) such other document(s) that establish(es) to the satisfaction of the INS, in its discretion, the affiant's paternity or guardianship;**
- E. a licensed program willing to accept legal custody; or**
- F. an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.**

15. Before a minor is released from INS custody pursuant to Paragraph 14 above, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

- A. provide for the minor's physical, mental, and financial well-being;
- B. ensure the minor's presence at all future proceedings before the INS and the immigration court;
- C. notify the INS of any change of address within five (5) days following a move;
- D. in the case of custodians other than parents or legal guardians, not transfer custody of the minor to another party without the prior written permission of the District Director;
- E. notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and
- F. if dependency proceedings involving the minor are initiated, notify the INS of the initiation of a such proceedings and the dependency court of any immigration proceedings pending against the minor.

In the event of an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 72 hours. For purposes of this Paragraph, examples of an "emergency" shall include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian in writing seeks written permission for a transfer, the District Director shall promptly respond to the request.

16. The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement required under Paragraph 15. The INS, however, shall not terminate the custody arrangements for minor violations of that part of the custodial agreement outlined at Subparagraph 15.C above.

17. A positive suitability assessment may be required prior to release to any individual or program pursuant to Paragraph 14. A suitability assessment may include such components as an investigation of the living conditions in which the minor would be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. Any such assessment should also take into consideration the wishes and concerns of the minor.

18. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, shall make and record the prompt and continuous efforts on its part toward family reunification and the release of the minor pursuant to Paragraph 14 above. Such efforts at family reunification shall continue so long as the minor is in INS custody.

VII INS CUSTODY

19. In any case in which the INS does not release a minor pursuant to Paragraph 14, the minor shall remain in INS legal custody. Except as provided in Paragraphs 12 or 21, such minor shall be placed temporarily in a licensed program until such time as release can be effected in accordance with Paragraph 14 above or until the minor's immigration proceedings are concluded, whichever occurs earlier. All minors placed in such a licensed program remain in the legal custody of the INS and may only be transferred or released under the authority of the INS; provided, however, that in the event of an emergency a licensed program may transfer temporary physical custody of a minor prior to securing permission from the INS but shall notify the INS of the transfer as soon as is practicable thereafter, but in all cases within 8 hours.

20. Within 60 days of final court approval of this Agreement, the INS shall authorize the United States Department of Justice Community Relations Service to publish in the Commerce Business Daily and/or

the Federal Register a Program Announcement to solicit proposals for the care of 100 minors in licensed programs.

21. A minor may be held in or transferred to a suitable State or county juvenile detention facility or a secure INS detention facility, or INS-contracted facility, having separate accommodations for minors whenever the District Director or Chief Patrol Agent determines that the minor:

A. has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act; provided, however, that this provision shall not apply to any minor whose offense(s) fall(s) within either of the following categories:

- i. Isolated offenses that (1) were not within a pattern or practice of criminal activity and (2) did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc. This list is not exhaustive.);
- ii. Petty offenses, which are not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc. This list is not exhaustive.);

As used in this paragraph, "chargeable" means that the INS has probable cause to believe that the individual has committed a specified offense;

B. has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;

C. has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc. This list is not exhaustive.);

D. is an escape-risk; or

E. must be held in a secure facility for his or her own safety, such as when the INS has reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

22. The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

A. the minor is currently under a final order of deportation or exclusion;

B. the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;

C. the minor has previously absconded or attempted to abscond from INS custody.

23. The INS will not place a minor in a secure facility pursuant to Paragraph 21 if there are less restrictive alternatives that are available and appropriate in the circumstances, such as transfer to (a) a medium security facility which would provide intensive staff supervision and counseling services or (b) another licensed program. All determinations to place a minor in a secure facility will be reviewed and approved by the regional juvenile coordinator.

24A. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case, unless the minor indicates on the Notice of Custody Determination form that he or she refuses such a hearing.

B. Any minor who disagrees with the INS's determination to place that minor in a particular type of facility, or who asserts that the licensed program in which he or she has been placed does not comply with the standards set forth in Exhibit 1 attached hereto, may seek judicial review in any United States District Court with jurisdiction and venue over the matter to challenge that placement determination or to allege noncompliance with the standards set forth in Exhibit 1. In such an action, the United States District Court shall be limited to entering an order solely affecting the individual claims of the minor bringing the action.

C. In order to permit judicial review of Defendants' placement decisions as provided in this Agreement, Defendants shall provide minors not placed in licensed programs with a notice of the reasons for housing the minor in a detention or medium security facility. With respect to placement decisions reviewed under this paragraph, the standard of review for the INS's exercise of its discretion shall be the abuse of discretion standard of review. With respect to all other matters for which this paragraph provides judicial review, the standard of review shall be *de novo* review.

D. The INS shall promptly provide each minor not released with (a) INS Form I-770; (b) an explanation of the right of judicial review as set out in Exhibit 6, and (c) the list of free legal services providers compiled pursuant to INS regulation (unless previously given to the minor).

E. Exhausting the procedures established in Paragraph 37 of this Agreement shall not be a precondition to the bringing of an action under this paragraph in any United District Court. Prior to initiating any such action, however, the minor and/or the minors' attorney shall confer telephonically or in person with the United States Attorney's office in the judicial district where the action is to be filed, in an effort to informally resolve the minor's complaints without the need of federal court intervention.

VIII TRANSPORTATION OF MINORS

25. Unaccompanied minors arrested or taken into custody by the INS should not be transported by the INS in vehicles with detained adults except

A. when being transported from the place of arrest or apprehension to an INS office, or

B. where separate transportation would be otherwise impractical.

When transported together pursuant to Clause (B) minors shall be separated from adults. The INS shall take necessary precautions for the protection of the well-being of such minors when transported with adults.

26. The INS shall assist without undue delay in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released pursuant to Paragraph 14. The INS may, in its discretion, provide transportation to minors.

IX TRANSFER OF MINORS

27. Whenever a minor is transferred from one placement to another, the minor shall be transferred with all of his or her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions will be shipped to the minor in a timely manner. No minor who is represented by counsel shall be transferred without advance notice to such counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived such notice, in which cases notice shall be provided to counsel within 24 hours following transfer.

X MONITORING AND REPORTS

28A. An INS Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation shall monitor compliance with the terms of this Agreement and shall maintain an up-to-date

record of all minors who are placed in proceedings and remain in INS custody for longer than 72 hours. Statistical information on such minors shall be collected weekly from all INS district offices and Border Patrol stations. Statistical information will include at least the following: (1) biographical information such as each minor's name, date of birth, and country of birth, (2) date placed in INS custody, (3) each date placed, removed or released, (4) to whom and where placed, transferred, removed or released, (5) immigration status, and (6) hearing dates. The INS, through the Juvenile Coordinator, shall also collect information regarding the reasons for every placement of a minor in a detention facility or medium security facility.

B. Should Plaintiffs' counsel have reasonable cause to believe that a minor in INS legal custody should have been released pursuant to Paragraph 14, Plaintiffs' counsel may contact the Juvenile Coordinator to request that the Coordinator investigate the case and inform Plaintiffs' counsel of the reasons why the minor has not been released.

29. On a semi-annual basis, until two years after the court determines, pursuant to Paragraph 31, that the INS has achieved substantial compliance with the terms of this Agreement, the INS shall provide to Plaintiffs' counsel the information collected pursuant to Paragraph 28, as permitted by law, and each INS policy or instruction issued to INS employees regarding the implementation of this Agreement. In addition, Plaintiffs' counsel shall have the opportunity to submit questions, on a semi-annual basis, to the Juvenile Coordinator in the Office of the Assistant Commissioner for Detention and Deportation with regard to the implementation of this Agreement and the information provided to Plaintiffs' counsel during the preceding six-month period pursuant to Paragraph 28. Plaintiffs' counsel shall present such questions either orally or in writing, at the option of the Juvenile Coordinator. The Juvenile Coordinator shall furnish responses, either orally or in writing at the option of Plaintiffs' counsel, within 30 days of receipt.

30. On an annual basis, commencing one year after final court approval of this Agreement, the INS Juvenile Coordinator shall review, assess, and report to the court regarding compliance with the terms of this Agreement. The Coordinator shall file these reports with the court and provide copies to the parties, including the final report referenced in Paragraph 35, so that they can submit comments on the report to the court. In each report, the Coordinator shall state to the court whether or not the INS is in substantial compliance with the terms of this Agreement, and, if the INS is not in substantial compliance, explain the reasons for the lack of compliance. The Coordinator shall continue to report on an annual basis until three years after the court determines that the INS has achieved substantial compliance with the terms of this Agreement.

31. One year after the court's approval of this Agreement, the Defendants may ask the court to determine whether the INS has achieved substantial compliance with the terms of this Agreement.

XI ATTORNEY-CLIENT VISITS

32. A. Plaintiffs' counsel are entitled to attorney-client visits with class members even though they may not have the names of class members who are housed at a particular location. All visits shall occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff shall provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit any such notice of appearance to representation of the minor in connection with this Agreement. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

B. Every six months, Plaintiffs' counsel shall provide the INS with a list of those attorneys who may make such attorney-client visits, as Plaintiffs' counsel, to minors during the following six month period. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law in Los Angeles, California or the National Center for Youth Law in San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

C. Agreements for the placement of minor in non-INS facilities shall permit attorney-client visits, including by class counsel in this case.

D. Nothing in Paragraph 32 shall affect a minor's right to refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

XII FACILITY VISITS

33. In addition to the attorney-client visits permitted pursuant to Paragraph 32, Plaintiffs' counsel may request access to any licensed program's facility in which a minor has been placed pursuant to Paragraph 19 or to any medium security facility or detention facility in which a minor has been placed pursuant to Paragraphs 21 or 23. Plaintiffs' counsel shall submit a request to visit a facility under this paragraph to the INS district juvenile coordinator who will provide reasonable assistance to Plaintiffs' counsel by conveying the request to the facility's staff and coordinating the visit. The rules and procedures to be followed in connection with any visit approved by a facility under this paragraph are set forth in Exhibit 4 attached, except as may be otherwise agreed by Plaintiffs' counsel and the facility's staff. In all visits to any facility pursuant to this Agreement, Plaintiffs' counsel and their associated experts shall treat minors and staff with courtesy and dignity and shall not disrupt the normal functioning of the facility.

XIII TRAINING

34. Within 120 days of final court approval of this Agreement, the INS shall provide appropriate guidance and training for designated INS employees regarding the terms of this Agreement. The INS shall develop written and/or audio or video materials for such training. Copies of such written and/or audio or video training materials shall be made available to Plaintiffs' counsel when such training materials are sent to the field, or to the extent practicable, prior to that time.

XIV DISMISSAL

35. After the court has determined that the INS is in substantial compliance with this Agreement and the Coordinator has filed a final report, the court, without further notice, shall dismiss this action. Until such dismissal, the court shall retain jurisdiction over this action.

XV RESERVATION OF RIGHTS

36. Nothing in this agreement shall limit the rights, if any, of individual class members to preserve issues for judicial review in the appeal of an individual case or for class members to exercise any independent rights they may otherwise have.

XVI NOTICE AND DISPUTE RESOLUTION

37. This paragraph provides for the enforcement, in this District Court, of the provisions of this Agreement except for claims brought under Paragraph 24. The parties shall meet telephonically or in person to discuss a complete or partial repudiation of this Agreement or any alleged non-compliance with the terms of the Agreement, prior to bringing any individual or class action to enforce this Agreement. Notice of a claim that defendants have violated the terms of this Agreement shall be served on plaintiffs addressed to:

CENTER FOR HUMAN RIGHTS & CONSTITUTIONAL LAW

Carlos Holguín

Peter A. Schey

256 South Occidental Boulevard

Los Angeles, CA 90057

NATIONAL CENTER FOR YOUTH LAW

Alice Bussiere

James Morales

114 Sansome Street, Suite 905

San Francisco, CA 94104

and on Defendants addressed to:

Michael Johnson
Assistant United States Attorney
300 N. Los Angeles St., Rm. 7516
Los Angeles, CA 90012

Allen Hausman
Office of Immigration Litigation
Civil Division
U.S. Department of Justice
P.O. Box 878, Ben Franklin Station
Washington, DC 20044

XVII PUBLICITY

38. Plaintiffs and Defendants shall hold a joint press conference to announce this Agreement. The INS shall send copies of this Agreement to social service and voluntary agencies agreed upon by the parties, as set forth in Exhibit 5 attached. The parties shall pursue such other public dissemination of information regarding this Agreement as the parties shall agree.

XVIII ATTORNEYS FEES AND COSTS

39. Within 60 days of final court approval of this Agreement, Defendants shall pay to Plaintiffs the total sum of \$_____, in full settlement of all attorneys' fees and costs in this case.

XIX TERMINATION

40. All terms of this Agreement shall terminate the earlier of five years from the date of final court approval of this Agreement or three years after the court determines that the INS is in substantial compliance with the Agreement, except the following: the INS shall continue to house the general population of minors in INS custody in facilities that are state-licensed for the care of dependent minors.

XX REPRESENTATIONS AND WARRANTY

41. Counsel for the respective parties, on behalf of themselves and their clients, represent that they know of nothing in this Agreement that exceeds the legal authority of the parties or is in violation of any law. Defendants' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Attorney General, the United States Department of Justice, and the Immigration and Naturalization Service, and acknowledge that Plaintiffs enter into this Agreement in reliance on such representation. Plaintiffs' counsel represent and warrant that they are fully authorized and empowered to enter into this Agreement on behalf of the Plaintiffs, and acknowledge that Defendants enter into this Agreement in reliance on such representation. The undersigned, by their signatures on

behalf of the Plaintiffs and Defendants, warrant that upon execution of this Agreement in their representative capacities, their principals, agents, and successors of such principals and agents shall be fully and unequivocally bound hereunder to the full extent authorized by law.

EXHIBIT 1
Minimum Standards for Licensed Programs

A. Licensed programs shall comply with all applicable state child welfare laws and regulations and all state and local building, fire, health and safety codes and shall provide or arrange for the following services for each minor in its care:

1. Proper physical care and maintenance, including suitable living accommodations, food, appropriate clothing, and personal grooming items.
2. Appropriate routine medical and dental care, family planning services, and emergency health care services, including a complete medical examination (including screening for infectious disease) within 48 hours of admission, excluding weekends and holidays, unless the minor was recently examined at another facility; appropriate immunizations in accordance with the U.S. Public Health Service (PHS), Center for Disease Control; administration of prescribed medication and special diets; appropriate mental health interventions when necessary.
3. An individualized needs assessment which shall include: (a) various initial intake forms; (b) essential data relating to the identification and history of the minor and family; (c) identification of the minors' special needs including any specific problem(s) which appear to require immediate intervention; (d) an educational assessment and plan; (e) an assessment of family relationships and interaction with adults, peers and authority figures; (f) a statement of religious preference and practice; (g) an assessment of the minor's personal goals, strengths and weaknesses; and (h) identifying information regarding immediate family members, other relatives, godparents or friends who may be residing in the United States and may be able to assist in family reunification.
4. Educational services appropriate to the minor's level of development, and communication skills in a structured classroom setting, Monday through Friday, which concentrates primarily on the development of basic academic competencies and secondarily on English Language Training (ELT). The educational program shall include instruction and educational and other reading materials in such languages as needed. Basic academic areas should include Science, Social Studies, Math, Reading, Writing and Physical Education. The program shall provide minors with

appropriate reading materials in languages other than English for use during the minor's leisure time.

5. Activities according to a recreation and leisure time plan which shall include daily outdoor activity, weather permitting, at least one hour per day of large muscle activity and one hour per day of structured leisure time activities (this should not include time spent watching television). Activities should be increased to a total of three hours on days when school is not in session.

6. At least one (1) individual counseling session per week conducted by trained social work staff with the specific objectives of reviewing the minor's progress, establishing new short term objectives, and addressing both the developmental and crisis-related needs of each minor.

7. Group counseling sessions at least twice a week. This is usually an informal process and takes place with all the minors present. It is a time when new minors are given the opportunity to get acquainted with the staff, other children, and the rules of the program. It is an open forum where everyone gets a chance to speak. Daily program management is discussed and decisions are made about recreational activities, etc. It is a time for staff and minors to discuss whatever is on their minds and to resolve problems.

8. Acculturation and adaptation services which include information regarding the development of social and inter-personal skills which contribute to those abilities necessary to live independently and responsibly.

9. Upon admission, a comprehensive orientation regarding program intent, services, rules (written and verbal), expectations and the availability of legal assistance.

10. Whenever possible, access to religious services of the minor's choice.

11. Visitation and contact with family members (regardless of their immigration status) which is structured to encourage such visitation. The staff shall respect the minor's privacy while reasonably preventing the unauthorized release of the minor.

12. A reasonable right to privacy, which shall include the right to: (a) wear his or her own clothes, when available; (b) retain a private space in the residential facility, group or foster home for the storage of personal belongings; (c) talk privately on the phone, as permitted by the house rules and regulations; (d) visit privately with guests, as permitted by the house rules and regulations; and (e) receive and send uncensored mail unless there is a reasonable belief that the mail contains contraband.

13. Family reunification services designed to identify relatives in the United States as well as in foreign countries and assistance in obtaining legal guardianship when necessary for the release of the minor.

14. Legal services information regarding the availability of free legal assistance, the right to be represented by counsel at no expense to the government, the right to a deportation or exclusion hearing before an immigration judge, the right to apply for political asylum or to request voluntary departure in lieu of deportation.

B. Service delivery is to be accomplished in a manner which is sensitive to the age, culture, native language and the complex needs of each minor.

C. Program rules and discipline standards shall be formulated with consideration for the range of ages and maturity in the program and shall be culturally sensitive to the needs of alien minors. Minors shall not be subjected to corporal punishment, humiliation, mental abuse, or punitive interference with the daily functions of living, such as eating or sleeping. Any sanctions employed shall not: (1) adversely affect either a minor's health, or physical or psychological well-being; or (2) deny minors regular meals, sufficient sleep, exercise, medical care, correspondence privileges, or legal assistance.

D. A comprehensive and realistic individual plan for the care of each minor must be developed in accordance with the minor's needs as determined by the individualized need assessment. Individual plans shall be implemented and closely coordinated through an operative case management system.

E. Programs shall develop, maintain and safeguard individual client case records. Agencies and organizations are required to develop a system of accountability which preserves the confidentiality of client information and protects the records from unauthorized use or disclosure.

F. Programs shall maintain adequate records and make regular reports as required by the INS that permit the INS to monitor and enforce this order and other requirements and standards as the INS may determine are in the best interests of the minors.

Exhibit 2
Instructions to Service Officers re:
Processing, Treatment, and Placement of Minors

These instructions are to advise Service officers of INS policy regarding the way in which minors in INS custody are processed, housed and released. These instructions are applicable nationwide and supersede all prior inconsistent instructions regarding minors.

(a) Minors. A minor is a person under the age of eighteen years. However, individuals who have been "emancipated" by a state court or convicted and incarcerated for a criminal offense as an adult are not considered minors. Such individuals must be treated as adults for all purposes, including confinement and release on bond.

Similarly, if a reasonable person would conclude that an individual is an adult despite his claims to be a minor, the INS shall treat such person as an adult for all purposes, including confinement and release on bond or recognizance. The INS may require such an individual to submit to a medical or dental examination conducted by a medical professional or to submit to other appropriate procedures to verify his or her age. If the INS subsequently determines that such an individual is a minor, he or she will be treated as a minor for all purposes.

(b) General policy. The INS treats and shall continued to treat minors with dignity, respect and special concern for their particular vulnerability. INS policy is to place each detained minor in the least restrictive setting appropriate to the minor's age and special needs, provided that such setting is consistent with the need to ensure the minor's timely appearance and to protect the minor's well-being and that of others. INS officers are not required to release a minor to any person or agency whom they have reason to believe may harm or neglect the minor or fail to present him or her before the INS or the immigration courts when requested to do so.

(c) Processing. The INS will expeditiously process minors and will provide them a Form I-770 notice of rights, including the right to a bond redetermination hearing, if applicable.

Following arrest, the INS will hold minors in a facility that is safe and sanitary and that is consistent with the INS's concern for the particular vulnerability of minors. Such facilities will have access to toilets and sinks, drinking water and food as appropriate, medical assistance if the minor is in need of emergency services, adequate temperature control and ventilation, adequate supervision to protect minors from others, and contact with family members who were arrested with the minor. The INS will separate unaccompanied minors from unrelated adults whenever possible. Where such segregation is not immediately possible, an unaccompanied minor will not be detained with an unrelated adult for more than 24 hours.

If the minor cannot be immediately released, and no licensed program (described below) is available to care for him, he should be placed in an INS or INS-contract facility that has separate accommodations for minors, or in a State or county juvenile detention facility that separates minors in INS custody from delinquent offenders. The INS will make every effort to ensure the safety and well-being of juveniles placed in these facilities.

(d) Release. The INS will release minors from its custody without unnecessary delay, unless detention of a juvenile is required to secure her timely appearance or to ensure the minor's safety or that of others.

Minors shall be released in the following order of preference, to:

- (i) a parent;
- (ii) a legal guardian;
- (iii) an adult relative (brother, sister, aunt, uncle, or grandparent);
- (iv) an adult individual or entity designated by the parent or legal guardian as capable and willing to care for the minor's well-being in (i) a declaration signed under penalty of perjury before an immigration or consular officer, or (ii) such other documentation that establishes to the satisfaction of the INS, in its discretion, that the individual designating the individual or entity as the minor's custodian is in fact the minor's parent or guardian;
- (v) a state-licensed juvenile shelter, group home, or foster home willing to accept legal custody; or
- (vi) an adult individual or entity seeking custody, in the discretion of the INS, when it appears that there is no other likely alternative to long term detention and family reunification does not appear to be a reasonable possibility.

(e) Certification of custodian. Before a minor is released, the custodian must execute an Affidavit of Support (Form I-134) and an agreement to:

- (i) provide for the minor's physical, mental, and financial well-being;
- (ii) ensure the minor's presence at all future proceedings before the INS and the immigration court;
- (iii) notify the INS of any change of address within five (5) days following a move;
- (iv) if the custodian is not a parent or legal guardian, not transfer custody of the minor to another party without the prior written permission of the District Director, except in the event of an emergency;
- (v) notify the INS at least five days prior to the custodian's departing the United States of such departure, whether the departure is voluntary or pursuant to a grant of voluntary departure or order of deportation; and

(vi) if dependency proceedings involving the minor are initiated, notify the INS of the initiation of a such proceedings and the dependency court of any deportation proceedings pending against the minor.

In an emergency, a custodian may transfer temporary physical custody of a minor prior to securing permission from the INS, but must notify the INS of the transfer as soon as is practicable, and in all cases within 72 hours. Examples of an "emergency" include the serious illness of the custodian, destruction of the home, etc. In all cases where the custodian seeks written permission for a transfer, the District Director shall promptly respond to the request.

The INS may terminate the custody arrangements and assume legal custody of any minor whose custodian fails to comply with the agreement. However, custody arrangements will not be terminated for minor violations of the custodian's obligation to notify the INS of any change of address within five days following a move.

(f) Suitability assessment. An INS officer may require a positive suitability assessment prior to releasing a minor to any individual or program. A suitability assessment may include an investigation of the living conditions in which the minor is to be placed and the standard of care he would receive, verification of identity and employment of the individuals offering support, interviews of members of the household, and a home visit. The assessment will also take into consideration the wishes and concerns of the minor.

(g) Family reunification. Upon taking a minor into custody, the INS, or the licensed program in which the minor is placed, will promptly attempt to reunite the minor with his or her family to permit the release of the minor under Paragraph (d) above. Such efforts at family reunification will continue so long as the minor is in INS or licensed program custody and will be recorded by the INS or the licensed program in which the minor is placed.

(h) Placement in licensed programs. A "licensed program" is any program, agency or organization licensed by an appropriate state agency to provide residential group, or foster care services for dependent children, including a program operating group homes, foster homes or facilities for special needs minors. Exhibit 1 of the Flores v. Reno Settlement Agreement describes the standards required of licensed programs. Juveniles who remain in INS custody must be placed in a licensed program within three days if the minor was apprehended in an INS district in which a licensed program is located and has space available, or within five days in all other cases, except when:

(i) the minor is an escape risk or delinquent, as defined in Paragraph (l) below;

(ii) a court decree or court-approved settlement requires otherwise;

(iii) an emergency or influx of minors into the United States prevents compliance, in which case all minors should be placed in licensed programs as expeditiously as possible; or

(iv) where the minor must be transported from remote areas for processing or speaks an unusual language such that a special interpreter is required to process the minor, in which case the minor must be placed in a licensed program within five business days.

(i) Secure and supervised detention. A minor may be held in or transferred to a State or county juvenile detention facility or in a secure INS facility or INS-contracted facility having separate accommodations for minors, whenever the District Director or Chief Patrol Agent determines that the minor -

(i) has been charged with, is chargeable, or has been convicted of a crime, or is the subject of delinquency proceedings, has been adjudicated delinquent, or is chargeable with a delinquent act, unless the minor's offense is

(a) an isolated offense not within a pattern of criminal activity which did not involve violence against a person or the use or carrying of a weapon (Examples: breaking and entering, vandalism, DUI, etc.); or

(b) a petty offense, which is not considered grounds for stricter means of detention in any case (Examples: shoplifting, joy riding, disturbing the peace, etc.);

(ii) has committed, or has made credible threats to commit, a violent or malicious act (whether directed at himself or others) while in INS legal custody or while in the presence of an INS officer;

(iii) has engaged, while in a licensed program, in conduct that has proven to be unacceptably disruptive of the normal functioning of the licensed program in which he or she has been placed and removal is necessary to ensure the welfare of the minor or others, as determined by the staff of the licensed program (Examples: drug or alcohol abuse, stealing, fighting, intimidation of others, etc.);

(iv) is an escape-risk; or

(v) must be held in a secure facility for his or her own safety, such as when the INS has reason to believe that a smuggler would abduct or coerce a particular minor to secure payment of smuggling fees.

"Chargeable" means that the INS has probable cause to believe that the individual has committed a specified offense.

The term "escape-risk" means that there is a serious risk that the minor will attempt to escape from custody. Factors to consider when determining whether a minor is an escape-risk or not include, but are not limited to, whether:

- (a) the minor is currently under a final order of deportation or exclusion;
- (b) the minor's immigration history includes: a prior breach of a bond; a failure to appear before the INS or the immigration court; evidence that the minor is indebted to organized smugglers for his transport; or a voluntary departure or a previous removal from the United States pursuant to a final order of deportation or exclusion;
- (c) the minor has previously absconded or attempted to abscond from INS custody.

The INS will not place a minor in a State or county juvenile detention facility, secure INS detention facility, or secure INS-contracted facility if less restrictive alternatives are available and appropriate in the circumstances, such as transfer to a medium security facility that provides intensive staff supervision and counseling services or transfer to another licensed program. All determinations to place a minor in a secure facility must be reviewed and approved by the regional Juvenile Coordinator.

(j) Notice of right to bond redetermination and judicial review of placement. A minor in deportation proceedings shall be afforded a bond redetermination hearing before an immigration judge in every case in which he either affirmatively requests, or fails to request or refuse, such a hearing on the Notice of Custody Determination. A juvenile who is not released or placed in a licensed placement shall be provided (1) a written explanation of the right of judicial review in the form attached, and (2) the list of free legal services providers compiled pursuant to 8 C.F.R. § 292a.

(k) Transportation and transfer. Unaccompanied minors should not be transported in vehicles with detained adults except when being transported from the place of arrest or apprehension to an INS office or where separate transportation would be otherwise impractical, in which case minors shall be separated from adults. INS officers shall take all necessary precautions for the protection of minors during transportation with adults.

When a minor is to be released, the INS will assist him or her in making transportation arrangements to the INS office nearest the location of the person or facility to whom a minor is to be released. The Service may, in its discretion, provide transportation to such minors.

Whenever a minor is transferred from one placement to another, she shall be transferred with all of her possessions and legal papers; provided, however, that if the minor's possessions exceed the amount permitted normally by the carrier in use, the possessions must be shipped to the minor in a timely manner. No minor who is represented by counsel should be transferred without advance notice to counsel, except in unusual and compelling circumstances such as where the safety of the minor or others is threatened or the minor has been determined to be an escape-risk, or where counsel has waived notice, in which cases notice must be provided to counsel within 24 hours following transfer.

(l) Periodic reporting. All INS district offices and Border Patrol stations must report to the Juvenile Coordinator statistical information on minors placed in proceedings who remain in INS custody for longer than 72 hours. Information will include: (a) biographical information, including the minor's name, date of birth, and country of birth, (b) date placed in INS custody, (c) each date placed, removed or released, (d) to whom and where placed, transferred, removed or released, (e) immigration status, and (f) hearing dates. The Juvenile Coordinator must also be informed of the reasons for placing a minor in a medium security facility or detention facility as described in paragraph (i).

(m) Attorney-client visits by Plaintiffs' counsel. The INS will permit lawyers for the *Reno v. Flores* plaintiff class to visit minors even though they may not have the names of minors who are housed at a particular location. A list of Plaintiffs' counsel entitled to make attorney-client visits with minors is available from the district Juvenile Coordinator. Attorney-client visits may also be conducted by any staff attorney employed by the Center for Human Rights & Constitutional Law of Los Angeles, California, or the National Center for Youth Law of San Francisco, California, provided that such attorney presents credentials establishing his or her employment prior to any visit.

Visits must occur in accordance with generally applicable policies and procedures relating to attorney-client visits at the facility in question. Upon Plaintiffs' counsel's arrival at a facility for attorney-client visits, the facility staff must provide Plaintiffs' counsel with a list of names and alien registration numbers for the minors housed at that facility. In all instances, in order to memorialize any visit to a minor by Plaintiffs' counsel, Plaintiffs' counsel must file a notice of appearance with the INS prior to any attorney-client meeting. Plaintiffs' counsel may limit the notice of appearance to representation of the minor in connection with his placement or treatment during INS custody. Plaintiffs' counsel must submit a copy of the notice of appearance by hand or by mail to the local INS juvenile coordinator and a copy by hand to the staff of the facility.

A minor may refuse to meet with Plaintiffs' counsel. Further, the minor's parent or legal guardian may deny Plaintiffs' counsel permission to meet with the minor.

(n) Visits to licensed facilities. In addition to the attorney-client visits, Plaintiffs' counsel may request access to a licensed program's facility (described in paragraph (h)) or to a medium-security facility or detention facility (described in paragraph (i)) in which a minor has been placed. The district juvenile coordinator will convey the request to the facility's staff and coordinate the visit. The rules and procedures to be followed in connection with such visits are set out in Exhibit 4 of the *Flores v. Reno* Settlement Agreement,, unless Plaintiffs' counsel and the facility's staff agree otherwise. In all visits to any facility, Plaintiffs' counsel and their associated experts must treat minors and staff with courtesy and dignity and must not disrupt the normal functioning of the facility.

EXHIBIT 3 Contingency Plan

In the event of an emergency or influx that prevents the prompt placement of minors in licensed programs with which the Community Relations Service has contracted, INS policy is to make all reasonable efforts to place minors in licensed programs licensed by an appropriate state agency as expeditiously as possible. An emergency is an act or event, such as a natural disaster (e.g. earthquake, fire, hurricane), facility fire, civil disturbance, or medical emergency (e.g. a chicken pox epidemic among a group of minors) that prevents the prompt placement of minors in licensed facilities. An influx is defined as any situation in which there are more than 130 minors in the custody of the INS who are eligible for placement in licensed programs.

1. The Juvenile Coordinator will establish and maintain an Emergency Placement List of at least 80 beds at programs licensed by an appropriate state agency that are potentially available to accept emergency placements. These 80 placements would supplement the 130 placements that INS normally has available, and whenever possible, would meet all standards applicable to juvenile placements the INS normally uses. The Juvenile Coordinator may consult with child welfare specialists, group home operators, and others in developing the list. The Emergency Placement List will include the facility name; the number of beds at the facility; the name and telephone number of contact persons; the name and telephone number of contact persons for nights, holidays, and weekends if different; any restrictions on minors accepted (e.g. age); and any special services that are available.
2. The Juvenile Coordinator will maintain a list of minors affected by the emergency or influx, including (1) the minor's name, (2) date and country of birth, and (3) date placed in INS custody.
3. Within one business day of the emergency or influx the Juvenile Coordinator, or his or her designee will contact the programs on the Emergency Placement List to determine available placements. As soon as available placements are identified, the Juvenile Coordinator will advise appropriate INS staff of their

availability. To the extent practicable, the INS will attempt to locate emergency placements in geographic areas where culturally and linguistically appropriate community services are available.

4. In the event that the number of minors needing emergency placement exceeds the available appropriate placements on the Emergency Placement List, the Juvenile Coordinator will work with the Community Relations Service to locate additional placements through licensed programs, county social services departments, and foster family agencies.

5. Each year, the INS will reevaluate the number of regular placements needed for detained minors to determine whether the number of regular placements should be adjusted to accommodate an increased or decreased number of minors eligible for placement in licensed programs. However, any decision to increase the number of placements available shall be subject to the availability of INS resources. The Juvenile Coordinator shall promptly provide Plaintiffs' counsel with any reevaluation made by INS pursuant to this paragraph.

6. The Juvenile Coordinator shall provide to Plaintiffs' counsel copies of the Emergency Placement List within six months after the court's final approval of the Settlement Agreement.

EXHIBIT 4 Agreement Concerning Facility Visits Under Paragraph 33

The purpose of facility visits under paragraph 33 is to interview class members and staff and to observe conditions at the facility. Visits under paragraph 33 shall be conducted in accordance with the generally applicable policies and procedures of the facility to the extent that those policies and procedures are consistent with this Exhibit.

Visits authorized under paragraph 33 shall be scheduled no less than seven (7) business days in advance. The names, positions, credentials, and professional association (e.g., Center for Human Rights and Constitutional Law) of the visitors will be provided at that time.

All visits with class members shall take place during normal business hours.

No video recording equipment or cameras of any type shall be permitted. Audio recording equipment shall be limited to hand-held tape recorders.

The number of visitors will not exceed six (6) or, in the case of a family foster home, four (4), including interpreters, in any instance. Up to two (2) of the visitors may be non-attorney experts in juvenile justice and/or child welfare.

No visit will extend beyond three (3) hours per day in length. Visits shall minimize disruption to the routine that minors and staff follow.

Exhibit 5

List of Organizations to Receive Information re: Settlement Agreement

Eric Cohen, Immig. Legal Resource Center, 1663 Mission St. Suite 602, San Francisco, CA 94103

Cecilia Munoz, Nat'l Council Of La Raza, 810 1st St. NE Suite 300, Washington, D.C. 20002

Susan Alva, Immig. & Citiz. Proj Director, Coalition For Humane Immig Rights of LA, 1521 Wilshire Blvd., Los Angeles, CA 90017

Angela Cornell, Albuquerque Border Cities Proj., Box 35895, Albuquerque, NM 87176-5895

Beth Persky, Executive Director, Centro De Asuntos Migratorios, 1446 Front Street, Suite 305, San Diego, CA 92101

Dan, Kesselbrenner, , National Lawyers Guild, National Immigration Project, 14 Beacon St.,#503, Boston, MA 02108

Lynn Marcus , SWRRP, 64 E. Broadway, Tucson, AZ 85701-1720

Maria Jimenez, , American Friends Service Cmte., ILEMP, 3522 Polk Street, Houston, TX 77003-4844

Wendy Young, , U.S. Cath. Conf., 3211 4th St. NE, , Washington, DC, 20017-1194

Miriam Hayward , International Institute Of The East Bay, 297 Lee Street , Oakland, CA 94610

Emily Goldfarb, , Coalition For Immigrant & Refugee Rights, 995 Market Street, Suite 1108 , San Francisco, CA 94103

Jose De La Paz, Director, California Immigrant Workers Association, 515 S. Shatto Place , Los Angeles, CA, 90020

Annie Wilson, LIRS, 390 Park Avenue South, First Asylum Concerns, New York, NY 10016

Stewart Kwoh, Asian Pacific American Legal Center, 1010 S. Flower St., Suite 302, Los Angeles, CA 90015

Warren Leiden, Executive Director, AILA, 1400 Eye St., N.W., Ste. 1200, Washington, DC, 20005

Frank Sharry, Nat'l Immig Ref & Citiz Forum, 220 I Street N.E., Ste. 220, Washington, D.C. 20002

Reynaldo Guerrero, Executive Director, Center For Immigrant's Rights, 48 St. Marks Place , New York, NY 10003

Charles Wheeler , National Immigration Law Center, 1102 S. Crenshaw Blvd., Suite 101 , Los Angeles, CA 90019

Deborah A. Sanders, Asylum & Ref. Rts Law Project, Washington Lawyers Comm., 1300 19th Street, N.W., Suite 500 , Washington, D.C. 20036

Stanley Mark, Asian American Legal Def.& Ed.Fund, 99 Hudson St, 12th Floor, New York, NY 10013

Sid Mohn, Executive Director, Travelers & Immigrants Aid, 327 S. LaSalle Street, Suite 1500, Chicago, IL, 60604

Bruce Goldstein, Attornet At Law, Farmworker Justice Fund, Inc., 2001 S Street, N.W., Suite 210, Washington, DC 20009

Ninfa Krueger, Director, BARCA, 1701 N. 8th Street, Suite B-28, McAllen, TX 78501

John Goldstein, , Proyecto San Pablo, PO Box 4596,, Yuma, AZ 85364

Valerie Hink, Attorney At Law, Tucson Ecumenical Legal Assistance, P.O. Box 3007 , Tucson, AZ 85702

Pamela Mohr, Executive Director, Alliance For Children's Rights, 3708 Wilshire Blvd. Suite 720, Los Angeles, CA 90010

Pamela Day, Child Welfare League Of America, 440 1st St. N.W., , Washington, DC 20001

Susan Lydon, Esq., Immigrant Legal Resource Center, 1663 Mission St. Ste 602, San Francisco, CA 94103

Patrick Maher, Juvenile Project, Centro De Asuntos Migratorios, 1446 Front Street, # 305, San Diego, CA 92101

Lorena Munoz, Staff Attorney, Legal Aid Foundation of LA-IRO, 1102 Crenshaw Blvd., Los Angeles, CA 90019

Christina Zawisza, Staff Attorney, Legal Services of Greater Miami, 225 N.E. 34th Street, Suite 300, Miami, FL 33137

Miriam Wright Edelman, Executive Director, Children's Defense Fund, 122 C Street N.W. 4th Floor,
Washington, DC 20001

Rogelio Nunez, Executive Director, Proyecto Libertad, 113 N. First St., Harlingen, TX 78550

Exhibit 6
Notice of Right to Judicial Review

"The INS usually houses persons under the age of 18 in an open setting, such as a foster or group home, and not in detention facilities. If you believe that you have not been properly placed or that you have been treated improperly, you may ask a federal judge to review your case. You may call a lawyer to help you do this. If you cannot afford a lawyer, you may call one from the list of free legal services given to you with this form."

EXHIBIT C

el 25 de octubre

Estimado Sr/a Juez:

Me llamo B [REDACTED] D [REDACTED] A [REDACTED] C [REDACTED]. Yo nací el [REDACTED] de [REDACTED] de [REDACTED]. Vine a este país con mis dos hermanas. La última vez que las vi fue en la frontera.

Mi mamá y mi familia vive en Ohio. Yo quiero salir de la cárcel y vivir con ellos. Siempre pienso en ellos y les hago falta mucho. Cuando pienso en ellos, me siento mal y quiero abrazarles a mis familiares. En la casa de mi mamá, yo me siento seguro. Desde ^{que} he estado aquí, yo hablo con mi mamá muy infrecuentemente. No me acuerdo de hablar con mis hermanos desde aquí y solo me acuerdo de hablar con mi hermano una vez. Cuando vivía en mi país, hablé con mi mamá casi cada día. Si salgo de aquí, quiero jugar fútbol con mi hermano en el parque y mirar películas con mi familia como hacíamos en mi país.


En este momento, estoy en una cárcel en California. No me gusta de estar aquí. Mi cuarto tiene una puerta encerrada. Pasamos muchas horas en los cuartos con las puertas encerradas. Cada día, pasamos una hora y no más al aire libre donde jugamos basquet. A veces hay peleas entre los muchachos cuando juegan. También hay peleas

dentro del edificio. La comida es mala y no me gusta. Creo que he comido un sandwich simple para mi comida cada día que he estado aquí.

Si salgo de aquí, quiero asistir a la escuela para aprender inglés. Quiero poder hablar con personas que hablan inglés y no español. Si salgo de aquí, yo voy a seguir las instrucciones de mi mamá y de mis hermanas. También si asisto las sesiones de terapia que me arregla mi mamá.

Gracias Srta Juez por ^{leer} ~~escribir~~ mi carta.

Atentamente,



SPANISH TO ENGLISH TRANSLATION

October 25

Dear Mr./Ms. Judge:

My name is B [REDACTED] D [REDACTED] A [REDACTED] C [REDACTED]. I was born on the [REDACTED] in 2001. I came to this country with my two sisters. The last time I saw them was at the border.

My mom and family live in Ohio. I want to leave the jail and live with them. I think about them always and I miss them a lot. When I think about them, I feel bad and I want to hug my relatives. In my mom's house, I feel safe. Since I have been here, I talk with my mother very infrequently. I do not remember the speaking with my sisters since I have been here and I remember speaking with my brother once. When I was living in my country, I spoke with my mother almost every day. If I leave here, I want to play soccer with my brother in the park and watch movies with my family like we used to do in my country.

At this moment, I am in a jail in California. I do not like being here. My room has a locked door. We spend many hours in our rooms with the doors locked. Each day, we spend one hour and no more outside where we play basketball. Sometimes there are fights between the boys as they play. There are also fights inside the building. The food is bad and I do not like it. I think I have eaten a simple sandwich as my lunch every day I have been here.

If I leave here, I want to attend school to learn English. I want to be able to speak with people who speak English and not Spanish. If I leave here, I will follow my mother's and my sisters' instructions. Also, I will attend the therapy sessions my mom arranges for me.

Thank you Mr./Ms. Judge for reading my letter.

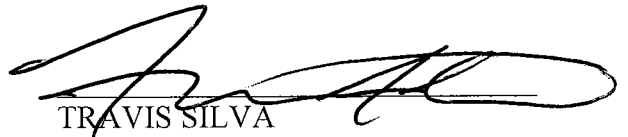
Sincerely,

[REDACTED]

CERTIFICATE OF TRANSLATION

I, Travis Silva, attest that I am literate and fluent in both English and Spanish. I hold a B.A. in Spanish Literature and an M.A. in Latin American Studies, both from the University of California, San Diego. In Woodland, California, on October 25, 2018, B.D.A.C, the petitioner in this matter, dictated to me in Spanish the contents of this letter. I transcribed his dictation to the best of my ability, and B.D.A.C. signed the letter. I then prepared the English translation of this document, translating it to the best of my ability. (The translation omits the stricken word on page 2.)

I declare the foregoing under penalty of perjury. Done at San Francisco, California, on November 7, 2018.



TRAVIS SILVA

EXHIBIT D



Catholic Charities Southwestern Ohio

Serve | Enlighten | Empower

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Most Rev.
Dennis M. Schnurr

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Jeff Weisker

Luke Wiley

Chief Executive Officer

Ted Bergh



October 19, 2018

Brenda Moreida
Yolo County Juvenile Detention Facility
2880 East Gibson Road
Woodland, CA 95776

RE: B [REDACTED] A [REDACTED] C [REDACTED] DOB [REDACTED]/2001

Dear Brenda,

The motive of this letter is to confirm that Ms. Veronica Cotto Yoc, mother of B [REDACTED] A [REDACTED] C [REDACTED], has enrolled her son in services through the mental health services program of Catholic Charities Southwestern Ohio, located in Cincinnati, Ohio. The services we can offer B [REDACTED] include outpatient mental health counseling and medication management. All direct service providers for B [REDACTED] are bilingual in English and Spanish. In addition to mental health services we are prepared to help B [REDACTED] and his family with additional services through the Su Casa Hispanic Center, including case management, health promotion, and education.

Once a release date is scheduled for B [REDACTED] please communicate with me directly and I will help schedule an intake appointment with a bilingual mental health therapist. We will work with you and the family to prioritize his ongoing treatment and care with our organization.

Please do not hesitate to reach out with questions, comments, or concerns. My direct phone number is 513-672-3712 and my email address is preynolds-berry@ccswoh.org.

Sincerely,

Patrick Reynolds-Berry MA, MSW, LISW-S
Interim Director of Mental Health Services

CC: Veronica Cotto Yoc



Catholic Charities Southwestern Ohio

Serve | Enlighten | Empower

Archbishop of Cincinnati

Most Rev.
Dennis M. Schnurr

October 22, 2018

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Jim Wahl

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Luke Wiley

Chief Executive Officer

Ted Bergh

To Whom It May Concern:

This letter is to confirm that Veronica Cotto Yoc is registered for parent education classes at Catholic Charities Southwestern Ohio. The class will take place at our Hamilton, Ohio office located at 1910 Fairgrove Ave. Suite B, Hamilton, OH 45011.

Start Date: Monday, October 29, 2018

Each class is 2 hours in duration and is held once a week on Monday evenings from 6:00 – 8:00 p.m. Participants will receive a certificate upon completion of six classes or 12 hours of instruction.

Catholic Charities Southwestern Ohio has been providing quality parenting education classes for over 25 years and is certified by the Council on Accreditation to provide these services.

Please feel free to contact me if you have any further questions at (513) 867-7063.

Thank you,

Pam Mortensen
Director of Community Outreach Services
Catholic Charities Southwestern Ohio

